SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 7

HARTFORD-EMPIRE COMPANY, F. GOODWIN SMITH, BARTLETT ARKELL, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 8

CORNING GLASS WORKS, EMPIRE MACHINE COMPANY, ALEXANDER D. FALCK, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 9

OWENS-ILLINOIS GLASS COMPANY, WILLIAM B. LEVIS, E. F. MARTIN, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 10

HAZEL-ATLAS GLASS COMPANY, J. HARRISON McNASH, WALTER H. McCLURE, ET AL., APPELLANTS,

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THATCHER MANUFACTURING COMPANY, H. C. MANDEVILLE, R. W. NIVER, ET AL., APPELLANTS,

vs.

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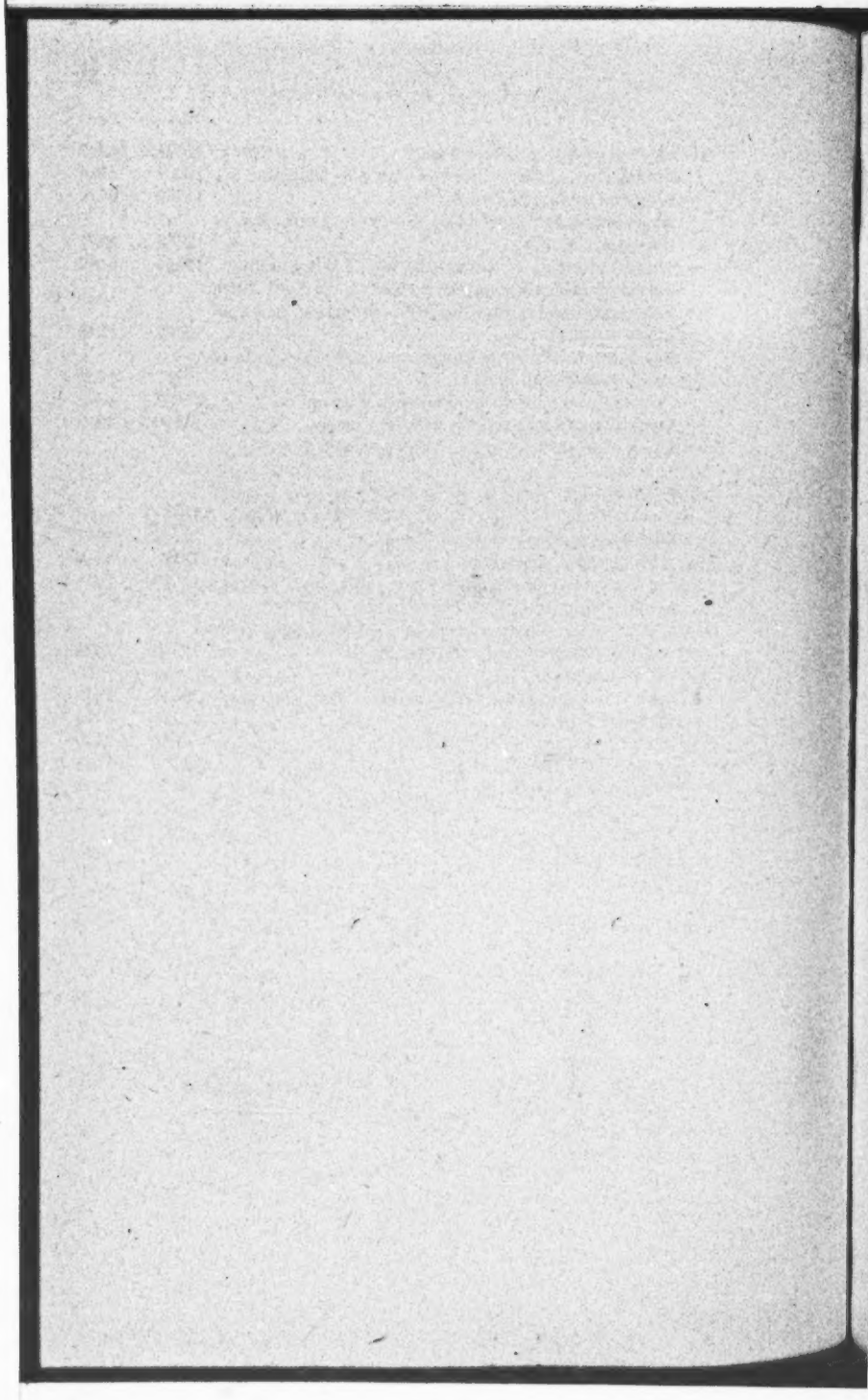

Mr. Isseks: We will stipulate it increased the efficiency of the factories.

[fol. 11294] Mr. Middleton: As well as the reduction of the production costs?

Mr. Isseks: To Owens, yes.

The Court: All right.

Mr. Middleton: I think I have completed the examination, subject to further check.

Cross-examination.

By Mr. Isseks:

Q. Your stationary pot used since 1932 is an O'Neill stationary pot. The one you are using now is the O'Neill stationary pot?

A. In connection with our AO machine?

Q. Yes, sir.

A. It contains some of the O'Neill features but it has been continually re-worked; it is not an O'Neill stationary pot.

Q. It started with the original O'Neill features as used in 1932?

A. That is right; it has some of the features of the O'Neill.

Q. And you have improved it since then?

A. That is right.

Q. Now, you testified about these various logs of the stationary forebay experiments. In connection with each of those experiments there are logs similar to the one which your counsel examined you about? In other words, there is a memorandum about each particular situation?

A. As far as I know, there is; there is intended to be. That is the way we find the facts,—by keeping good records. I would expect to find a job sheet of each one that way.

[fol. 11295] Q. In other words, there is one on the 1925 unsuccessful experiment, which is on the last page of the memorandum which you prepared, bottom of the page, next to the last line, you testified about it yesterday,—remember you testified yesterday about it?

A. Yes, there would be.

Q. There is a memorandum on it?

A. Yes.

Q. And there is a memorandum on the 1926 experiment?

A. Yes.

Q. And there is a memorandum on the 1929 experiment?

A. There should be.

Mr. Isseks: I would like to have them all, every contemporaneous memorandum.

The Court: They may be produced.

Mr. Isseks: Thank you very much.

No further questions.

Mr. Wood: I would like to make a request of government counsel at this time, inasmuch as it has been mentioned for the first time, as far as I know, the government is going to request the compulsory licensing of certain Owens patents as part of the relief sought in this case, we be supplied at this particular time with a list of these patents, in order that we can tell something about the case we have to meet.

Mr. Isseks: Your Honor, the patents relate to the stationary pot acquired from O'Neill as part of the conspiracy between Hartford and Owens.

[fol. 11296] *By* Mr. Wood: And that is all?

Mr. Isseks: I don't know what else Your Honor may desire to do. Your Honor may decide to break up Owens, as far as I know. I don't know what Your Honor will do.

Mr. Wood: I want to know what the government is requesting for relief.

Mr. Isseks: We are going to ask for the compulsory licensing of the stationary pot. That is all I was addressing myself to this morning.

Mr. Wood: What we want to find out is whether you were addressing yourself to the one subject-matter or whether the relief was broader.

Mr. Isseks: It may be before we get through.

Mr. Wood: I think our case should be directed to that, and that we should know, so that we will know how the case should be directed.

Mr. Isseks: That is a new one to me. We don't know until after the case is over, what Your Honor may decide to do.

Mr. Wood: But the complaint can be amended at any time to conform to the government's desire, and we don't know what we will have to meet.

Mr. Isseks: We are not making any request now. We may after they put in the proof, we may ask for the dissolution of Owens,—I don't know.

The Court: We will take the usual morning recess.

(Recess taken.)

[fol. 11297] Mr. Middleton: Just one or two more questions, Your Honor, please.

Redirect examination.

By Mr. Middleton:

Q. Mr. McLaughlin, will you state whether or not you have as yet been able to make the large Owens machine,—the 10-arm, or any with more arms,—work successfully with the stationary pot?

A. We have not. We do not use the stationary pot on any of our larger machines.

Q. And why do you not use them?

A. For the reason that—well, on completion of our OA development with the small machine with the stationary pot, from the information that we learned there, we knew, due to the great amount of exposure that would be required, that we had very little chance of being successful on the larger machines.

Q. Well, does the difficulty of using the larger machines with the stationary pot account for your not having substituted the stationary pot more than you have in your factories?

A. That is right. In other words, with the fuel saving with the stationary pot, there is no question if we could use the stationary pot with the larger machine we would use them.

Q. And are you still using them?

A. We have no program under way for that development.

* * * * * * *

[fol. 11298] Q. I don't recall whether I asked you, Mr. McLaughlin, as to whether or not you used the AE, the old AE Owens machine, at Streator, with the rotating pot, in 1933, '34 and '35?

A. Yes, I would say we did.

Mr. Wood: Now Mr. Isseks has asked a question in regard to Exhibit O-5958, or, rather, did ask the question yesterday,—and that is whether or not the machines in use in 1940 in next to the right-hand column, are in respect to machines only in the Owens factories or all machines in the United States. I have made inquiry, and I have found that that column relates only to Owens factories, because we do not know the exact disposition that licensees, such as Ball Brothers or Hazel, may have made of their machines.

Mr. Isseks: Thank you very much.

The Court: All right, call your next witness. That will be all, Mr. McLaughlin.

[fol. 11299] Thereupon the defendant, Owens-Illinois Glass Company, further to maintain the issues on its part, called as a witness in its behalf, MINOT KINGMAN HOLMES, who, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Middleton:

Q. Give the Court your full name, please.

A. Minot Kingman Holmes.

Q. Where do you live, Mr. Holmes?

A. Muncie, Indiana.

Q. You are employed by Owens-Illinois Glass Company there?

A. Yes.

Q. How long have you been in the business of manufacturing glass, Mr. Holmes?

A. About thirty-seven years.

Q. Now, with what company were you connected before being connected with the Owens-Illinois?

A. Hemingray Glass Company.

Q. It was always located at Muncie, was it not?

A. During my time it was located at Muncie.

Q. Did you start with Hemingray thirty-seven years ago?

A. Yes, sir.

Q. Quite a young boy at that time?

A. About eighteen.

Q. What were your duties with Hemingray, very briefly, starting at that time?

A. Well, I started in the machine and worked several years there at the trade, the mold-making trade, and I was foreman of the machine shop a short time, and I was super-
[fol. 11300] intendent of the factory, and I finally got to be chief engineer of the Hemingray Company.

Q. Were you filling that position at the time Owens-Illinois took over the Hemingray factory?

A. I was.

Q. And what has been your line of work in the factory since Owens-Illinois became the owner of the factory.

A. I have had charge of the insulator department, and I worked on the development of glass block in that plant.

Q. The Hemingray Plant located at Muncie, Indiana, has always used press machines, have they not, or for a great many years, at least?

A. Mainly press machines.

Q. Mainly insulators involving the use of press machines?

A. Yes.

Q. Rather than a bottle machine, blowing type?

A. Yes.

Q. So your work has been in the mechanical end, the moldmaking and the mechanical end of the business?

A. Until the last two years.

Q. Do you recall, Mr. Holmes, when the glass block business was transferred to the Muncie plant of the Owens-Illinois?

A. I think it was 1935—early in '35.

Q. And where had the work with respect to the glass block been done prior to that?

A. Well, it had been at Evansville and Columbus, and at Newark, Ohio.

Q. When it came to the Muncie plant in 1935, what if anything did you have to do then with the glass block project?

[fol. 11301] A. Well, the principle I worked on was the making of the form of the block that they were interested in at that time, the sealing of that block together, and the machinery and equipment to do it with.

Q. Well, did you have machinery at that time for pressing glass blocks?

A. Well, we had machinery for pressing block insulators which we converted into and made some of the smaller glass blocks on.

Q. Was there any machine, so far as you knew, that you could buy that was designed especially for glass blocking?

A. Not that would work with our process.

Q. Glass block was a new item, was it not, being made by glass manufacturers at that time?

A. I don't think it was exactly a new item, but it was an item that was not very well developed up to that time. It was not a very satisfactory product.

Q. Was the machinery for making glass block developed satisfactory?

A. Well, up to that time they had used the regular machines used in the industry, and they were not making many special machines developed for glass blocks.

Q. What size block did you at first undertake to make?

A. I think the first block we made was a square block about six inches square.

Q. Now, the block that was made at Columbus——

A. I wish to correct that—it was an oblong block, about 8x4.

Q. About 8x4?

A. Yes, it was an oblong block.

Q. Now, the blocks that were first made at Columbus, what general shape were they as compared with the ones that are now being made?

[fol. 11302] A. Well, they were block pressed in one piece with a lid on something like a butter dish.

Q. So that the entire block was pressed except the lid that went on one side?

A. That was made like these deep butter dishes with the lid on top of it.

Q. Well, was that design changed after you came and brought the business to Muncie?

A. Why, I think there had been a design made of that kind some time before, but it had not been developed, of a block such as we made at Muncie, of two similar pieces put together, fastened together.

Q. So that now the halves are of equal size, the two parts of the block are of one size?

A. Yes, they are similar.

Q. And they are welded together?

A. Welded together.

Q. Into one block?

A. Yes.

Q. To what size did you increase the glass block after it came to Muncie?

A. We eventually built a block 12 inches square.

Q. Did you undertake to make the 12 inch square blocks as early as 1936?

A. We undertook to make them, but very unsatisfactory.

Q. Why was it unsatisfactory?

A. Our machines were not capable of handling that large a piece of glassware.

[fol. 11303] Q. Was the problem of pressing a 12 inch square block materially different from pressing a small one six inches square?

A. Yes, it took a great deal more pressure and took a great deal larger amount of glass.

Q. Was the cooling problem any different?

A. Well it was quite difficult.

Q. Was it any more difficult than the cooling of the smaller block?

A. We had to spend more heat units to remove a much larger pot of glass.

Q. Who assisted you in working on the problem of getting machinery that would press this glass block—who in your own organization?

A. Well, Mr. Zimmerman was the plant manager of the Muncie plant at that time, and he had charge of me and all the activities at Muncie.

Q. Did you and Mr. Zimmerman work together on the problem?

A. We worked very closely on all the problems.

Q. State whether or not at any time during the course of your study of this problem you called in the Lynch Corporation of Anderson?

A. We called them in connection with the press to make glass blocks.

Q. Now, about when was it that you called them, if you recall?

A. It was early in '36.

Q. Do you remember approximately whether January or February?

A. I think it was February.

[fol. 11304] Q. Well, now, did any representatives of the Lynch Company come over to your factory at that time to study the problem on the ground?

A. Well, we had quite an elaborate session with the Lynch people.

Q. Who came to Muncie representing Lynch, if you remember?

A. Why, I think there was Mr. Bridges and Mr. Doll, and some of their engineers—I am not sure; there were at least four people at these meetings.

Q. When they came there, what did you do? Did you explain the problem to them?

A. Well, we took them in and gave them an outline of the type of machine that we wanted, and we took them into the factory and showed them our complete process of manufacturing glass blocks at that time.

Q. How long were they there?

A. I think they were there most of one day when the original study was made, and then I think they came back after that. I am not just sure how many times.

Q. Were any of the processes and ideas which you revealed to them at that time confidential?

A. Very. Most all of them. We just started into the development of what we called the metal sealed block at that time, and all of the work done was kept very confidential at that time.

Q. Did you allow them to see all of the steps?

A. We thought it was necessary for them to see everything connected with our process in order to develop a proper machine for our work.

[fol. 11305] Q. Had you at that time acquired any ideas as to the type of press machine you would need to do the job for you?

A. Our people in our organization and myself had very definite ideas.

Q. Can you tell the Court very briefly what some of those ideas were that you wished to have incorporated in a machine?

A. We wanted a machine sufficiently large to be able to handle a 12 inch block, press it into shape, and give plenty of room on the machine for development of future mechanisms we might want to have installed on it.

Q. I have here a photograph of a machine which is entitled the Miller Model MPLS, if Your Honor cares to refer to the pictures.

Mr. Isseks: Have you got some for us?
Mr. Middleton: Yes, you have them there.

Q. This picture has been identified as Exhibit O-5989. Can you tell us what that is, of what that is a photograph?
A. I think this is the standard Miller Machine.
Q. Made by whom?
A. Made by Lynch Company.
Q. Is that the machine which Lynch had at the time in 1936 that you interviewed them?
A. They made this type of machine at that time.
Q. Is that the machine which would have been available to you if you would have wanted to purchase one from them?
A. Yes.
Q. Would that machine do your work?
A. No. It was not satisfactory for our type of work.
[fol. 11306] Q. I believe you said you had revamped some of your own presses that were used in making insulators so that they would do something of a job in making glass blocks?
A. We had several months' experience pressing these pieces on our machines, and consequently had developed some rather definite ideas of what we wanted in a machine for this purpose.
Q. Now, I hand you exhibits, two photographs marked Exhibits O-5990 and O-5991. The general appearance of this machine in the picture seems to be, one is the right hand picture and the other a left hand picture of the same machine. What do those photographs show, those two?
A. These show the machine that Lynch built for us at that time.
Q. Are those two photographs of the same machine?
A. Yes.
Q. One picture taken from one side and one from the other?
A. One is from the front and one is from the back.
Q. Is that what had been referred to in this case as the PGB Machine?
A. Yes.
Q. It is the one that Lynch finally made for you?
A. Yes.
Q. Now, I show you a photograph marked Exhibit O-5992, which appears to be a picture of a machine in

operation with a gob of glass suspended in the picture just before it drops into the mold. Is that a picture of the PGB Machine in operation in the Muncie factory?

A. Yes. It is the same machine.

[fol. 11307] Q. Another photograph I hand you marked Exhibit O-5993, which would appear to be the same machine in the factory, but with the gob of glass having dropped into the mold,—that difference. Is that a picture of the machine in operation?

A. This is the PGB Machine in operation in the plant.

Honor.

Mr. Middleton: We offer these photographs, Your

The Court: They may be admitted.

Q. Now, I call your attention, Mr. Holmes, to Exhibit 5990. Now, comparing that Exhibit 5990 with Exhibit 5889, which is the picture of the Lynch Machine, and calling your attention to the table on which there appears in the PGB Machine rather substantial round pieces that look like they were intended to have molds set on them. Do you see what I am referring to?

A. Yes.

Q. What do you call those round platform-like affairs on that machine?

A. Those are air-cooled bases.

Q. Do you call them mold shoes, too?

A. They could be called that.

Q. Now, in the side of each mold shoe in that PGB picture there is an opening. What is that opening for?

A. That is to let air in to circulate underneath the bottom part of the mold to keep it cool.

Q. What was your reason for desiring this machine built with that air-cooling facility?

A. The particular molds that we use for glass blocks have a great deal of flat surface for the base of the block. The [fol. 11308] gob of glass comes in and lays on that surface. Consequently it becomes very hot, and in order to get speed or operate the machine with any degree of efficiency there has to be special cooling adapted at that point. That was the reason for this change from a standard type.

Q. Did you explain to the Lynch representatives the problem which you had which in your judgment required air-cooling in the mold shoe?

A. We did.

Q. Was that a situation that was different from the situation that you would meet in pressing ordinary table ware?

A. Usually their molds are higher and have more surface on the outside to cool them than the block mold has. They can be cooled by other means shown on that other picture.

Q. When you pressed a block 12 inches square how high would the sides of the block be after it was pressed?

A. They would be about an inch and a half.

Q. How thick?

A. This section of the glass?

Q. Of the walls?

A. They were a minimum of a quarter of an inch.

Q. What problem did you encounter then in pressing a block 12 inches square with walls 2½ inches high and only a quarter of an inch thick?

A. The walls collapsed very easily. After they were pressed the walls fell back into the mold. They would not stay there because they were heavy and the hot metal reheated those walls and they collapsed.

Q. Was that a problem that was peculiar to pressing a [fol. 11309] large block of that sort?

A. It was.

Q. Did you explain that to the Lynch representatives?

A. We went into that in great detail because it had been a source of a great deal of trouble to us.

Q. Was that one of the difficult problems to overcome in the manufacture of large pressed blocks?

A. It was.

Q. Were the ideas which you had acquired with respect to that and looking towards a solution confidential?

A. Very.

Q. Now, was this air cooling of the mold shoe one of the elements to cool the mass of glass in the mold in connection with the effort to solidify it and keep it from collapsing?

A. It was.

Q. What other mechanism did you have in mind to assist in preventing the collapse of the sides of the block?

A. We had a wind that blew into the block just as soon as possible after it was pressed. The force of the air held the sides of the block up and cooled them as rapidly as we could.

Q. Refer to Exhibit 5992, which is a picture with the gob of glass suspended before it has dropped into the mold. In the picture just in front of the suspended gob of glass there is a mold with what appears to be a flame coming up around the plunger. What operation is taking place at that point?

A. At this next station beyond the pressing station there is an air head that holds both sides of the block up.

[fol. 11310] Q. Air is being introduced through that pipe down into the newly pressed block at that point?

A. That is right.

Q. And the purpose of that is to hold the walls out until they set?

A. That is right.

Q. The necessity for that was explained at length to Lynch?

A. In detail.

Q. What direction does the press machine rotate; does it rotate clockwise or counter-clockwise?

A. Counter-clockwise.

Q. Now, referring to Exhibit 5993, which is the picture of the machine in operation with the gob of glass already dropped in the mold. Does that, as you have now designed this machine, and as Lynch has built it, does that gob of glass rest in the mold any length of time before the table moves to another station?

A. After it is dropped?

Q. Yes.

A. Yes, for quite a while.

Q. How many molds are on this machine?

A. Well, this machine was made for both six and eight mold operation.

Q. How long does it take for it to make a complete revolution; do you know how many blocks a minute could be turned out?

A. Well, it made about one a minute at that time.

Q. Did it make a complete revolution then in a minute?

A. About that.

Q. Then the mold would remain in one position approxi-

[fol. 11311] mately ten seconds, would it?

A. About that.

Q. Then after the gob of glass dropped into the mold in Exhibit 5993, it would lay there until the expiration of approximately ten seconds, is that right?

A. Yes.

Q. Then what would happen to the machine?

A. Then it revolves to the next position.

Q. It remains in the mold where it is dropped and is then pressed at the end of the ten second interval, is that correct?

A. Yes.

Q. Then immediately when it is pressed what happens to the table?

A. The table revolves and it passes to the position where this blow head is blowing air into the block.

Q. Now, that movement which we have outlined and which, for the benefit of the Court, I will try to rehearse because this is important. The gob of glass drops into the mold, remains there as long as possible before it is pressed. Then it is pressed at the end of the ten second interval and then immediately moves to the next station where the air is introduced to hold up the side. Is that timing of this table and press machine different from the timing and operation of the other press machines that were on the market?

A. The other press machines that Lynch made at that time were just the reverse. The finished article stayed under the plunger after it was pressed for a considerable time and then moved.

[fol. 11312] Q. Did you determine before the Lynch people came down here the desirability of making—of indexing the table so it would operate as already described?

A. We demanded that the machine be built that way.

Q. Was that in your judgment one of the things that was necessary and essential to the successful manufacture of large blocks?

A. I don't believe we could make blocks satisfactorily without that.

Q. Was that one of the things that you held as confidential?

A. Very.

Q. When Lynch built the machine did they index the table so it would operate in that manner which you have outlined and which you say you told them would be required?

A. They made the time cycle on the machine as we suggested.

Q. Now, I call your attention to the two exhibits again, the one, the Lynch Machine Exhibit 5989, and either one of the photographs of the PGB Machine, I will say 5990. What

material difference is there between those two machines with respect to the mechanism which holds the plunger that does the pressing? Will you point that out to the Court and hold that photograph up if necessary, so His Honor will be able to follow you?

A. We did not think that this construction in here was adequate for a large plunger used in making glass blocks.

Q. Now, wait a minute. What are you referring to?

A. MPLS construction of the plunger. We demanded a very much stronger construction and extra guide rods of [fol. 11313] quite large diameter because a plunger there which was 12 inches, not quite, about ten inches and a half wide, you could see how that would tend to throw this thing out of alignment in pressing an uneven piece of glass and making it even in the mold, and we had had considerable trouble with machines we were using.

[fol. 11314] Q. Where is the plunger attached which goes down into the glass?

A. The head of the plunger attaches right there. It has a long stem that brings the bottom part of the plunger down within this part here.

Q. And the plunger is attached to the end of this central shaft?

A. Yes, that has a chuck arrangement there which catches it.

Q. Just about a half inch above the bottom plate?

A. I would say it is nearer four inches.

Q. In this picture it is about a half an inch.

A. Yes.

Q. Then it works through this plate that shows, suspended in the picture?

A. That is right.

Q. When that plunger went down into a mold 12 inches square in which there was a gob of glass, what was the tendency on the plunger with respect to pushing it sideways?

A. Well, we had a great deal of trouble with the attachment, where the plunger attaches on the machine, of bending that, in our type of machine; and that is one of the reasons we demanded this much sturdier construction, and better, better-designed construction at that point.

Q. How large was the gob of glass,—what does it weigh,—you were required to press?

A. I think it weighs a little better than 100 ounces,—115 or 120 ounces.

Q. To your knowledge, had anybody ever pressed that large a gob of glass before?

[fol. 11315] A. Not in commercial practice, I don't believe.

Q. What if any mechanism did you use with this machine for directing the gob into the mold when it left the feeder?

A. Well, we used what we called a "turn-over" mechanism.

Q. Just very briefly explain what you mean by that.

* * * * * * *

[fol. 11316] Q. Will you very briefly explain what you mean by this mechanism you refer to?

(Previous questions and answer read:

"Q. What if any mechanism did you use with this machine for directing the gob into the mold when it left the feeder?

"A. Well, we used what we called a 'turn-over' mechanism.

"Q. Just very briefly explain what you mean by that.")

A. This mechanism was different from that generally used in the glass industry, in that it turned a gob of glass over, the other side up, before it deposited it into the mold, or rolled it over onto its other side.

Q. Why was it necessary to roll it over?

A. So that the marks which would come from the chute would be on the top side, would be stretched out, wouldn't appear in the fact of the block.

Q. Did the use of this turn-over mechanism involve some adjustment or setting of the Lynch machine, of the machine they would make?

A. In their design of the machine it had to be taken into account in order that the machine could properly be installed in the plant.

Q. Was this turn-over mechanism you refer to, one that you had worked out in your own plant?

A. Yes, it was.

[fol. 11317] Q. One of your own devices?

A. One of our own devices.

Q. Did you consider it an important device and the operation of it important?

A. Very important.

Q. Was that one of the things also considered confidential at that time?

A. It was.

Q. Do you recall any other major confidential items that were revealed to Lynch when you asked them to assist you in working out a machine, design of machine?

A. They were acquainted with all the details of the process that we were then using, which were all confidential.

Q. How about the molds themselves, with regard to light refraction? Was that also a problem at that time?

A. We had done some work on it at that time.

Q. Has the refraction of light due to the shape of the inside of the block been a problem in glass block manufacture?

A. Yes, it has been a big problem.

Q. You were then working on it?

A. We had some designs.

Q. Was that also revealed to Lynch?

A. Yes, all mold information was given to Lynch.

Mr. Middleton: I think that is all.

The Court: Cross-examination?

Mr. Isseks: We have no questions.

Mr. Wood: In response to the government's request, Owens was to make a search for a report written by Mr. [fol. 11318] Cramer.

Mr. Isseks: We asked for both Cramer and Soubier.

Mr. Wood: We have found the Cramer report, and it is in this volume which we have submitted to government's counsel this morning. We haven't been able to find the Soubier report.

Mr. Isseks: I understand Mr. Soubier made a report but it cannot be located?

Mr. Wood: That is my understanding of it. The degree of formality, I do not know—if you would like to offer this Cramer report, we would appreciate it if you would put it in right now.

Mr. Isseks: We offer it right now, and ask to have it marked as Government's Exhibit 1993.

Any more question you want to ask the witness?

Mr. Middleton: One thing. There is just one more question, Your Honor.

Minot Kingman Holmes, being recalled, further testified as follows:

Examination by

Mr. Middleton.

Q. In this case, Mr. Holmes, it has been shown that you were asked at one time by Mr. Parham, of Hartford-Empire, to be ready to testify in the case between Hartford and Swindell with respect to lehrs. Do you remember, in a general way, that such an arrangement was made?

A. I remember that it was.

Q. I merely want to ask you whether or not you ever did testify?

[fols. 11319-11323] A. No, I did not.

Q. You were never called to testify?

A. I was not.

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[fols. 11324-11325] (At 2 o'clock p. m., Wednesday, January 14, 1942, the trial was resumed.)

Mr. Isseks: Your Honor, the record does not show that Your Honor has admitted Exhibit 1993, which is the report by Mr. Cramer.

The Court: I have it marked admitted.

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[fol. 11326] John H. McNerney, being recalled for further examination, testified as follows:

Direct examination.

By Mr. Middleton (Continued):

Mr. Middleton: Now, Your Honor will recall that when Mr. McNerney was last on the stand, his examination was interrupted for the balance of the day—that was last Thursday—and we are intending to resume where we left off at

that time. It will connect up with Mr. McNerney's previous testimony, ending at page 9786 of the record.

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[fol. 11327] Now following that I wish to present as an ex-
[fol. 11328] hibit, a letter dated March 1, 1905, from the Thatcher Manufacturing Company to Owens Bottle Machine Company, which is now being marked as Exhibit O-5994.

Mr. Isseks: No objection.

The Court: It may be admitted.

(Exhibit O-5994 read by Mr. Peters.)

Mr. Middleton: This exhibit was presented to show how the Thatcher Manufacturing Company came into that chain.

Now the license agreement of September 16, 1904, which is already in the record as Exhibit O-5211, was then amended under date of May 28, 1908, by the agreement already in the record as Exhibit O-5212, and that amendment cancelled and repealed Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 31, 34 and 35 of the agreement of September 16, 1904, which was Exhibit O-5211.

Then the license agreement, Exhibit 5211 was cancelled July 22, 1930, which is in the record, and that cancellation appears in the record in Exhibit O-5215.

That tells the story of the record, Your Honor.

I call attention to the fact that in the original agreement, Exhibit 5211, dated 9-16-1904, Emil Bock application No. 188,582, filed January 11, 1904, and application 189,572, filed January 18, 1904, and on which patents were later issued, both of those applications were included in the license, so whatever rights that Owens had in the Bock patents went to Thatcher for milks, at that early date. Now those two patents are now included in an exhibit recently introduced, [fol. 11329] Exhibit O-5953, which is a bound book of Owens' patents—both of those Bock patents.

Q. Now, Mr. McNerney, do you recall to whom the second and third licenses by the Owens Bottle Machine Company were issued?

Mr. Isseks: Your Honor, I hate to interrupt, but I am perfectly willing to have counsel make a statement, and save all the necessity of asking the witness questions. He was

not with the company at that time, and counsel's statement is as good as his—both lawyers—I accept them both,—for the same company.

Mr. Middleton: Thank you,—and they are a good company.

I will state, then, Your Honor, that the agreements which I have here, and which will be marked and placed in the record, undertake to show the history of these early licenses, how they originally, in the second and third licenses issued as the ones following the Travis Milk Bottle license, were issued on the same day, November 1, 1904. The one was the license to the Ohio Bottle Company, dated November 1, 1904, which I am asking to be marked as Exhibit O-5995.

Mr. Isseks: No objection.

The Court: It may be admitted.

Mr. Middleton: I call attention to the fact that this license to the Ohio Bottle Company, at the bottom of page 4——

The Court: From the Toledo Glass Company?

Mr. Middleton: It is from the Owens Bottle Machine [fol. 11330] Company and the Toledo Glass Company, to the Ohio Bottle Company, Exhibit 5995.

The Court: I see.

Mr. Middleton: And at the bottom of page 4 of that license it is stated that it is for the purpose of manufacturing bottles for beer, porter, ale, and all other malt beverages, and bottles for soda-water and all other carbonated beverages other than wines and liquors; and (3) narrow-neck bottles for non-carbonated waters, but no other kind of bottle. So that it is limited to what is commonly known as the beverage field.

On the same day that the Ohio Bottle Company license was issued, another was issued to the Northwestern Ohio Bottle Company, dated November 1, 1904, and which I now ask to be marked as Exhibit O-5996.

Mr. Isseks: No objection.

The Court: It may be admitted.

Mr. Middleton: This license to the Northwestern Ohio was limited, as will appear at the bottom of page 4, to all bottles not exceeding 32 oz. capacity, and to contain wines, whiskey, liquor, grape juice, Peruna and Liquizone bottles, and bottles for Hostetter's Bitters. So that it was restricted to that field.

Now, both of those licenses were assigned to the American Bottle Company prior to the last of 1907——

Q. Is that your understanding, Mr. McNerney?
A. Yes, sir.

Mr. Middleton:

Q. Then by the close of 1907, after the Owens had been in operation from 1903, how many licensees did Owens [fol. 11331] have?

Mr. Isseks: Your Honor, I hate to interrupt, but I will let counsel make a statement as to that—I make no objection whatsoever.

Mr. Middleton: Very well. I appreciate your liberality, Mr. Isseks, but I just didn't want to impose on you at all. I am, of course, glad to talk, and I will talk, then, until you interrupt, and I will take no offense when you see fit to do so.

Mr. Isseks: I will not interrupt you.

Mr. Middleton: At the close of 1907, that indicates that there were but two licenses, the Baldwin-Travis license, which had gone to Thatcher, and the Ohio Bottle Company and Northwestern Company, both of which had gone to the American Bottle Company, and the American Bottle Company and the Baldwin-Travis were the only licensees.

Now, turning to the license history of the fruit jars, we start with the license agreement dated January 2, 1909, which was issued by Owens Bottle Company as licensor and the Toledo Glass Company as joint licensor, to Hollweg. That agreement I now ask to be marked as Exhibit O-5997.

Mr. Isseks: No objection.

The Court: That is to Louis Hollweg?

Mr. Middleton: That is to Louis Hollweg, yes, Your Honor, and it is No. 11 in your book.

The Court: It may be admitted.

[fol. 11332] Mr. Middleton: On Page 4 of that license, Exhibit O-5997, the limited character is indicated, and it shows that it was limited to the manufacture of not more than 300,000 gross during any one year of Mason fruit jars, Lightning fruit jars, and other sealing jars used in preserving fruits for domestic purposes, the opening in which shall not be less than 2 1/8 inches in diameter.

The next instrument in the series of fruit jar licenses is already in the record as Exhibit O-5210, and is dated November 17, 1909. This is a license agreement between Owens Bottle Company, as Licensor, and Toledo Glass

Company, as Owner, and Greenfield Fruit Jar & Bottle Company, which company has succeeded Hollweg. Now, that agreement of November 17th rescinded the agreement of Hollweg dated January 2, 1909. As I say, it is already in the record as Exhibit O-5210.

The next step was taken January 23, 1915, when the Greenfield Fruit Jar & Bottle Company and Ball Brothers Glass Manufacturing Company notified Owens of its intention to assign the November 17, 1909, agreement, which was Exhibit 5210, to Ball Brothers Glass Company, and that notice of asignment is in the record already as Exhibit O-5213.

The original fruit jar license of November 17, 1909, which is Exhibit 5210, expired by its own terms November 1, 1924. In order to settle a dispute as to certain paragraphs in that agreement, of the original agreement, a new license agreement was made November 2, 1924, which is already in the record as Exhibit 195, and that agreement, Exhibit 195, expired by its own terms June 6, 1933. And that was the [fol. 11333] end of the history of the fruit jar licenses.

Passing now to the Hazel-Atlas contract, leaving fruit jars, the next license that was issued after the fruit jar license was the one to Hazel-Atlas dated May 20, 1909, a partial copy of which license is in the record as Exhibit 909, and the complete contract consisting of this bulky red-bound book is in the record as Exhibit O-5208. Two other exhibits relate to this subject matter. One is Exhibit 910, being a letter of September 23, 1924, from Hazel-Atlas to Owens, and the other exhibit, 911, being a letter dated September 29, 1924, from Mr. Boshart, of Owens, to Hazel-Atlas.

I wish, for connection, to call the Court's attention to Paragraph numbered 1 of Exhibit 5208, which is this 1908 agreement between Owens and Hazel-Atlas, which reads:

"The Licensor hereby gives and grants to said Licensee the exclusive right and license to manufacture under any and all of said letters patent, glass articles designated in the catalog of said Licensee hereto annexed by the signatures 'J. C. B.' on behalf of said Licensee, and 'Owens Bottle Company, by W.S.W., Treasurer', on behalf of said Licensor, but not for the manufacture of any other articles whatsoever."

I also wish to call to the Court's attention that in this bound volume, Exhibit 5208, there are certain other papers, letters relating to the agreement. I am not certain whether those letters were offered and a part of this exhibit, but to [fol. 11334] make certain I wish now to offer as a part of Exhibit 5208 all of the correspondence and memoranda, whatever there may be, attached to or bound with the agreement and the blueprints which form a part of the agreement.

I find that those letters include one of February 1, 1911, from J. C. Brady to W. S. Walbridge; one dated January 31, 1911, from Owens Bottle Machine Company, dictated by "W. S. W.," which would be Mr. Walbridge, to Mr. J. C. Brady;

A letter dated October 31, 1910, from Hazel-Atlas Glass Company, by J. C. Brady, to the Owens Bottle Machine Company;

One dated October 29, 1910, from the Owens Bottle Machine Company, W.S.W. dictating it, to the Hazel-Atlas Glass Company;

One dated April 23, 1912, from the Owens Bottle Machine Company, by W. S. Walbridge, Secretary and Treasurer, to the Hazel-Atlas Glass Company;

One dated December 5, 1917, by the Owens Bottle Machine Company, dictated by W. S. W., to W. H. Boshart, Sales Manager;

One dated January 6, 1919, from Hazel-Atlas Glass Company, by J. C. Brady, to W. S. Walbridge, Vice-President of the Owens Bottle Company;

One dated September 20, 1923, dictated by "M. —. O." There is no signature on the copy in this file but it is indicated as written by the vice-president and addressed to J. C. Brady, President of the Hazel-Atlas Glass Company, Wheeling, West Virginia.

[fol. 11335] Q. Now, Mr. McNerney, I will ask you whether you know Mr. Mike—M. J. Owens wrote the letter?

Mr. Isseks: I will stipulate it.

Mr. Middleton: There is also an instrument dated May 19, 1909, signed by J. C. Brady, which is a part of the file and therefore offered. All of these letters relate to the contract.

The Court: Without objection they will be admitted.

Mr. Isseks: I understood they were part of the record

already, so I cannot object. He said he wanted to introduce them as part of Exhibit 5208.

Mr. Middleton: I just wanted to make sure they were considered.

The Court: Are they all clipped together?

Mr. Middleton: Yes, they are.

The Court: Do you want to mark them 5208-A?

Mr. Middleton: Your Honor, they are already bound in.

Mr. Isseks: They are already in the exhibit in evidence.

Mr. Middleton: If it is understood they are admitted, I think it will take care of it.

I also call attention to the fact that this agreement of May 20, 1909, grants to Hazel-Atlas the exclusive rights and license to practice those inventions, in so far as they have any right to manufacture it is an exclusive right, and it is so stated in the government.

Now, I assume we had better read these instruments.

The Court: Which agreement is it you want to read?

[fol. 11336] Mr. Middleton: Perhaps I can eliminate some of these by glancing over them.

The Court: Is it the one of May 20, 1909?

Mr. Middleton: Well, it is these letters that are attached as a part of the Exhibit 5208, which the Court has never heard read.

The Court: Is counsel prepared to underscore the points he wants to emphasize and to read those only.

Mr. Middleton: I am not at this moment. If Your Honor desires, I can do that.

The Court: It might save time.

Mr. Middleton: We can read these a little bit later.

The Court: It might save some time.

Mr. Middleton: I am perfectly willing to do that.

Q. Mr. McNerney, do you, from the performance of your official duties, know whether or not there was any dispute between Owens and Hazel-Atlas as to the construction of this contract to which we have just been referring?

A. I know that there was a dispute.

Q. And down to what period did that dispute continue?

A. Well, that dispute prevailed at the time I first went with the company and continued down to about 1932.

Mr. Middleton: Before pursuing that inquiry further, I find I should have marked and presented one other exhibit, which is an additional contract between Hazel-Atlas and the

Owens Company, dated May 20, 1909. It is not the agreement granting the license, but it is a separate and entirely distinct agreement of May 20, 1909.

[fol. 11337] The Court: What number do you give it?

Mr. Middleton: It is Exhibit O-5998, Your Honor, and it is offered.

Mr. Isseks: No objection.

Mr. Middleton: Your Honor has a copy there. It will be observed that this agreement provides for the payment by Hazel-Atlas to the Owens Company of a certain sum of money for this exclusive license which was granted from Owens to Hazel-Atlas, of the same date, the payment being in the form of 5,000 shares, $100 each, fully paid and non-assessable capital stock of the Hazel-Atlas. And that explains the manner in which Owens Bottle Machine Company became a stockholder in the Hazel-Atlas Company in 1909—the stock was received in payment for an exclusive license.

The Court: It may be admitted.

Q. Now, Mr. McNerney, pursuing a bit further this matter I referred to as the dispute, what was the character of the dispute between Hazel-Atlas and Owens over this contract?

A. Well, there were several items involved. The principal dispute, and a constantly recurring one, which caused a great deal of dickering and arguing back and forth, was because the original license to Hazel-Atlas Glass Company gave them the exclusive right to make such glass containers, which were delineated in a catalog which was attached to the license, and provided that other glass articles were excluded. It also provided a method for adding to the license other glass articles, which was that Hazel-Atlas should submit a blueprint to the Owens Bottle Company, and when that blue-[fol. 11338] print had been initialed by J. C. Brady, the president of Hazel-Atlas, and William S. Walbridge, the president of Owens-Illinois Glass Company, the articles delineated became a part of that license. Well, that method was quite cumbersome, and a volume of blueprints was submitted, and the issue arose every time a shape should be changed or every time a new item was added, and it became particularly acute when mayonnaise jars became popular. You remember mayonnaise swept the country at one time when salads came into vogue, and mayonnaise jars were one of the very profitable items and they were not clearly in-

cluded in Hazel-Atlas license, although mayonnaise jars, being a wide mouth jar, did conform to the general line of manufacture in which Hazel was engaged. Hazel constantly asserted the right to make these mayonnaise jars on the Owens machine, and of course it was all the time making them on its other machines, and the Owens Company claimed that it had the right. So that a dispute arose that was never satisfactorily settled under that old license.

Q. Until what year?

A. Till 1932, when there was a general settlement of a number of these disputes which had grown up between the companies.

Q. Was there any dispute with respect to the patents or machines which were covered by the license to Hazel?

A. Yes. Now, the first dispute was as regards the articles that Hazel was permitted to make. The second was as regards to the breadth of this license under Owens' patents. That is to say, it was clear that it had the right to use Owens [fol. 11339] suction inventions in the field for which it was licensed, but it wasn't so clear that it had the right to use feeders and feeder-fed forming machines. Hazel asserted that under the "improvements" clause in the license it had the right to use the machines, and Owens denied it. And the issue became particularly acute about the time the Hartford-Empire suit against the U. S. Glass Company and the Berney-Bond Glass Company was tried, in which suit Mr. Owens and some other employes, I think including Mr. La-France, testified in behalf of the two defendants against Hartford-Empire Company, and endeavored to establish the Brookfield patent against Hitchcock. At that time the Hazel-Atlas Glass Company held the Brookfield patent, which our people contended anticipated Hitchcock. There was the question as to whether we had any right to that Brookfield patent under our license. Mr. Owens got in touch with Mr. Brady and obtained an assignment to the Owens Company of that Brookfield patent, which at that time had only a year or two to run, and as a result of the introduction of that into the suit the Court in that case held that the Brookfield patent, as I recall it, anticipated Hitchcock.

Now, in connection with that, Hazel-Atlas asserted Mr. Owens committed himself to Mr. Brady to give Hazel-Atlas the right to use the Lott patents in the general fields of ware

in which Hazel-Atlas was licensed to use the Owens suction machine. Mr. Owens understanding——

Mr. Isseks: Your Honor, I will ask to interrupt. I move to strike out the witness's answer unless he was present [fol. 11340] at the conversations between Mr. Owens and Mr. Brady. It is double and triple hearsay right through here.

The Witness: Well, I was present.

Mr. Isseks: Was he present at all the conversations?

The Court: He says he was.

The Witness: I wouldn't say at all the conversations.

Mr. Isseks: I would like to find out which ones he was present at. If there is any correspondence I would like to see it.

Q. Were you present at any conference between Mr. Brady and Mr. Owens at which Mr. Owens made the statements you relate?

A. Yes, I was in Mr. Owens' office when he called up Mr. Brady by long distance to ask him for the Brookfield patent. I also sent the telegram Mr. Owens sent to Mr. Brady concerning it, and I received one from Mr. Brady concerning it.

Mr. Isseks: May we have the telegrams and correspondence?

Mr. Middleton: I am afraid we cannot produce the telegrams, Mr. Isseks; we will do the best we can.

Mr. Isseks: I move to strike out the part of the evidence as to which the witness was not present. He certainly didn't hear what Mr. Brady said. If he heard what Mr. Owens said he can state it. It seems to me we have certain rules of law that we have to abide by.

Q. You tell what Mr. Owens said and what you know from personal observation of the telegrams.

[fol. 11341] A. Well, I cannot recall the conversation, but the incident is fairly clear in my mind, because following the conversation I had to go down to Wheeling, West Virginia. Now, first I had to have a suggested form of agreement drafted by counsel covering the transfer, and then I had to take it down and did take it down to Wheeling and discussed it with Mr. Brady, and had quite a discussion with him about it, and brought it back, unexecuted, and then had some discussions with Mr. Owens concerning it. If it is

satisfactory, I will state the substance of the conversation. It was that the Brookfield patent was to be assigned to us. We would use it in the suit which Hartford was bringing against Berney-Bond and against United States Glass Company. If any damages were recovered for infringement of that patent by Hartford, the damages for the fields of ware which Hazel-Atlas was licensed to make would be given to Hazel-Atlas; and the damages for the fields of ware which the Owens Company had then the right on on Owens suction machines would be retained by the Owens Company.

Mr. Isseks: He says this was included in the suit of Hartford against Berney-Bond. I don't understand it. Was it to be used in case Owens sued the Hartford people? I am kind of puzzled. Maybe there is an agreement we can see.

The Witness: No, I think I can explain that.

Mr. Isseks: Berney-Bond couldn't get it.

The Witness: The understanding was that the Owens Company, which was then fighting Hartford hammer and [fol. 11342] tongs, would go after them any way it could on this Brookfield patent, either by counterclaim in the suit or by separate suits.

* * * * * * *

The Witness: We were cooperating with the Berney-Bond people in the defense of their suit.

The Court: They were being sued by the Hartford Company?

The Witness: They were being sued by the Hartford Company.

Mr. Middleton: Perhaps I can clear some of this up by putting in some of these exhibits. The story is told in exhibit form pretty much. We may be getting just a little bit ahead of the schedule of narration.

Q. What you have related, Mr. McNerney, was that your own knowledge acquired by discussing the matter with Mr. Brady and with Mr. Owens?

A. Yes.

Mr. Middleton: Now, going back a moment to the dispute which existed with respect to the agreement between Hazel- [fol. 11342] Atlas and Owens, I wish to present, Your Honor, as Exhibit O-5999, an unfinished letter, report, of Mr. Henry W. Carter, dated March 25, 1930. That is one of the papers

that has been stipulated between Owens and the government.

Mr. Isseks: I would like to know the purpose of the offer, Your Honor.

Mr. Middleton: The offer is to show the existence and character of the dispute between the Hazel-Atlas and Owens up to the date of this instrument.

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[fols. 11344-11345] Mr. Middleton: In the letter just read, reference is made to a letter of W. J. Belknap dated December 27, 1927, which I desire to have marked as Exhibit O-6000.

Mr. Isseks: Your Honor, I assume it is being offered?

Mr. Middleton: Yes, I offer that letter.

• • • • • • •

The Court: I don't know what he states in here. If he states any matters of fact, I suspect that would have to be received as his opinion at that time and not for the absolute truth of what he says. There is no way of cross-examining Mr. Belknap.

• • • • • • •

[fol. 11346] The Court: Exhibit O-6000 will be admitted, and the bailiff may recess court fifteen minutes.

(Short recess.)

The Court: Proceed.

Mr. Middleton: We will ask that Exhibit O-6000 be read at this time, Your Honor.

(Exhibit O-6000 read by Mr. Peters.)

Mr. Middleton: We regret the length of these letters, Your Honor, but have no control over that.

Q. Now, Mr. McNerney, were you working with Mr. Car-
[fol. 11347] ter, in contact with Mr. Carter, during the years 1920 to 1932?

A. Well, I was in close contact with him from 1924 to '32, and fairly close contact between 1920 and '24. I think his office was next door to mine from 1924 to 1929.

Q. Did you have occasion to discuss with Mr. Carter this question of the construction of the Hazel-Atlas agreement, from time to time?

A. Yes. He and I worked together on these various phases, particularly the types of bottles that Hazel had the right to make under its license, and then also to some extent concerning the improvements question.

Q. Were you on the licensing committee at that time?

A. I was on the licensing committee until about 1925, I should say.

Q. Now, you heard Mr. Carter's letter of March 25, 1930, read as Exhibit 5999, this afternoon?

A. Yes.

Q. Would you say, in a general way, whether or not—would you say whether or not you agreed with Mr. Carter's statement of the problem?

A. Yes. That was a very mixed situation, continually giving rise to difficulties and trouble, and I had—I won't say daily contact, but almost daily contact with Mr. Carter on some phase of that Hazel-Atlas dispute. He, over a period of years, made a collection of every bottle that Hazel-Atlas had ever been authorized to make under its license, kept them on a table in his room—quite a large collection of bottles—for over a period of a year, and I helped him get some of those bottles together, and frequently discussed [fol. 11348] with him as to whether or not the precise bottle was the one delineated in the catalog and in the blueprints of the catalog, and therefore did or did not come under the Hazel-Atlas license.

Q. And I believe you stated that controversy continued down on to the execution of the 1932 agreement?

A. Yes, sir, it did.

Q. Do you have any recollection of the preparation of this report by Mr. Carter which has been read—did you have anything to do with that?

A. Yes, sir. Mr. Carter discussed it with me at great length and many times, and I was generally familiar with the entire basis of the letter, and to a considerable extent with the detailed argument which supported the opinions he gave in his letter.

Mr. Middleton: I wish now to take up the questions arising concerning the Brookfield patents, Your Honor, which have been casually mentioned by Mr. McNerney this after-

noon. The record already contains, as Exhibit 1,000, the license dated May 20, 1921, from Hazel-Atlas to Owens, covering the five Brookfield patents. That is already in the record.

Q. Now, Mr. McNerney, did you have anything to do with the negotiating of that license on May 20, 1921, from Hazel-Atlas to Owens, covering the Brookfield patents?

A. Yes, sir. That negotiation was carried on by Mr. Michael J. Owens and myself.

Q. Well, do you know whether or not any question arose, [fol. 11349] or any dissatisfaction on the part of Mr. Brady of Hazel-Atlas, with respect to that license, Exhibit 1000?

Mr. Isseks: Before or after the agreement was made?

Mr. Middleton: After the execution of the license itself.

Q. That is the license agreement which you have there, itself. I will ask you this, Mr. McNerney: is that the license which was under consideration later and under discussion between Mr. Owens and Mr. Brady?

A. This is the license under which we acquired the rights to the Brookfield patents, and which later became the subject of a controversy between our company and Hazel-Atlas Glass Company.

Mr. Middleton: I have here now, marked as Exhibit O-6001, a report of J. C. Blair to the Board of Directors of Owens, dated October 20, 1923, which I wish to offer.

Mr. Isseks: I would like to see it. I don't know whether we have it. Do we have it?

Mr. Middleton: It is your No. 27 in your book.

Mr. Isseks: No objection, Your Honor.

The Court: What is the date of it?

Mr. Middleton: It is October 20, 1923, and it is No. 27 in Your Honor's set.

The Court: It may be admitted.

Mr. Middleton: Exhibit O-6001, dated October 20, 1923, is addressed to the Board of Directors of the Owens Bottle Company. (Mr. Middleton then reads Exhibit O-6001.)

[fol. 11350] Q. Now, Mr. McNerney, you have heard this read, referring to paragraph 5, the unnumbered paragraph 5, and we see that it refers to a verbal agreement between Mr. Brady, and Mr. Owens. Are you familiar with that

verbal agreement,—is that the one you referred to a while ago?

A. Yes, sir, that is.

Q. Were you present when they made that verbal agreement?

Mr. Isseks: We don't question it, Your Honor.

A. Yes, sir, I was.

Q. Do you have any recollection as to the terms of that agreement beyond what is stated in this report which I have just read?

A. Well, I felt that the agreement that was made at the time was very indefinite. In general it was mostly an agreement, a gentlemen's agreement, made between Mr. Owens and Mr. Brady, each relying entirely on the other's good faith in the matter. Mr. Brady, when we got to details, said he had entire confidence in Mr. Owens' fairness in the matter, and he had never yet failed to reach any agreement with Mr. Owens and was satisfied Mr. Owens would not take advantage of him here. And that is the general type of agreement that it was. It didn't go into the details, but left it to the general fairness of the parties, pretty much.

Q. Do you know whether or not any written agreement was ever made between Owens and Hazel-Atlas covering those matters which are recited here as having been covered by the verbal agreement?

[fol. 11351] A. Well, there had been a previous written exclusive license, except for the reservation to Hazel, the grant by Hazel to Owens covering the five Brookfield patents.

Q. I mean subsequently in time was there any written agreement?

A. There was no written agreement ever executed subsequent to that time, to my knowledge.

Mr. Middleton: I wish now to present excerpts from the minutes of the directors of the Owens Bottle Company, dated November 8, 1923, which have been marked Exhibit O-6002. In fact, this exhibit consists of two papers, the excerpts of the minutes of directors of November 8, and excerpts from the minutes of the executive committee of the Owens Bottle Company on November 6, 1923.

Mr. Isseks: Your Honor, we make no objection to either

of these documents, but we would like the privilege, in connection with these documents and some others in which there are excerpts, of reading the original minutes so we may, if we desire, add other portions of the minutes by way of further proof by the government, if desired.

The Court: They may be admitted.

Mr. Middleton: The government had access to them at all times.

Mr. Isseks: There is no doubt about that. But there may be other matters as to which the government would like that privilege.

Mr. Middleton: I would like to read, first, the second page.

[fol. 11352] (Mr. Middleton reads excerpts from minutes on second page, and also first page.)

Mr. Isseks: I may be out of order, but I would like to inquire whether there was ever any such agreement executed in 1923 or 1924 between Hazel-Atlas and Owens?

Mr. Middleton: I asked Mr. McNerney that question already, but I will repeat it.

Q. Was any such written agreement as that executed subsequently to those dates?

A. No, there was no such written agreement as that executed.

Q. Now, at the time of this transaction, was the suit against Berney-Bond Company pending, do you know?

A. The suit had been brought, as I recall it, in 1921, and I——

Q. Against Berney-Bond?

A. You mean the suit by Hartford-Fairmont Company against Berney-Bond and United States Glass Company?

Q. That is right.

Mr. Isseks: I think it is already a matter of record.

Mr. Wood: The record shows that the case was decided by Judge Schoonmaker early in May, 1923, and an appeal was pending at the time, the appeal never going through to completion.

Mr. Isseks: That is right, Your Honor. It has already been testified to at length. We will stipulate it.

Q. Was Mr. Owens at that time interested in the general proposition of the litigation which was going on between

[fol. 11353] Hartford-Fairmont and Berney-Bond and United States Glass?

A. He was very actively interested.

Q. Did that account for his acquiring the Brookfield patent, his interest in the general glass situation?

A. Well, that was one of the reasons why he acquired the Brookfield patent, for its use in that suit, but there were other reasons, too.

Q. Do you know whether or not Mr. Owens believed, as expressed in your presence, that the Hartford plug feeder infringed the Brookfield?

Mr. Isseks: Objection.

The Court: What would that be conclusive of?

Mr. Isseks: I renew my objection on the ground it is hearsay. There is plenty of evidence in the case already as to what Mr. Owens did, and for this witness to testify what he told him is hearsay.

Mr. Middleton: I only asked him whether Mr. Owens in his presence had expressed a belief.

Mr. Isseks: It is still hearsay, Your Honor.

The Court: Sustained.

Mr. Middleton: I now present, as Exhibit O-6003, the report of J. F. Rule, entitled, "Report on Present Glass Feeder Situation", and there is also on this the reference to the Owens records from which it is taken, Record 796.

Q. Mr. McNerney, was that taken from the corporate record books of Owens?

Mr. Isseks: I will stipulate it, Your Honor. My question is, what is the date of this document? There is no date [fol. 11354] on it.

* * * * * * *

The Court: I don't know who J. F. Rule is.

* * * * * * *

The Witness: Patent solicitor. He was our chief patent solicitor at that time.

Mr. Isseks: There has been testimony to that effect. We don't question its authenticity whatsoever. We make no objection if it is taken only for the limited purpose of showing the state of mind of Owens Bottle Company.

The Court: It may be admitted for that purpose.

Mr. Middleton: We will have the date in the morning.

[fol. 11355] The Witness: This bears the notation, "Record 796", and in the minutes of the directors' meeting, on the margin of the minutes, these numbers are all set forth. This is the key as to a certain set of minutes of the directors' meeting.

Mr. Middleton: We can supply that now. I have the reference here and I will give it, subject to check: that the minutes from which this was taken were dated April 9, 1921. That date may be put on the exhibit.

Mr. Isseks: All right.

Mr. Middleton: I shall read the exhibit if it is received.

The Court: Received.

(Exhibit O-6003 read by Mr. Middleton.)

[fol. 11356] Q. Do you know whether or not Mr. Owens made any effort to interest Mr. Brady in assisting in those cases before he took the Brookfield patents over?

A. Yes, he did. He wanted Mr. Brady to definitely interfere and take a hand first of all in assisting in the defense of these two suits, and later in the fight against Hartford.

Q. What was Mr. Brady's attitude?

Mr. Isseks: I assume the witness is testifying to participation in conversations himself and not what someone told him.

Q. I meant so to inquire, give only your own knowledge.

A. I know Mr. Owens did point out to Mr. Brady—I should not say point out——

Q. Were you present when that was done?

A. Yes. That was part of the telephone conversation which I referred to earlier. He did not point out to Mr. Brady—he argued with Mr. Brady that full advantage should be taken of the Brookfield patents in the fight against the Hitchcock patents owned by Hartford, and that Hazel-Atlas should actually take a part in it.

Q. Did Hazel-Atlas actually take that part?

A. They may have taken a nominal part. I don't remember that they took an active part. In fact, that was the reason we had to acquire the Brookfield patents.

Q. Did Mr. Owens then actively participate in those trials?

A. Yes. Mr. Owens testified in those suits, and others of our organizations accompanied him to the suits and testified.

Q. Mr. McNerney, do you know whether or not Hazel-Atlas in making its claims against Owens over this period [fol. 11357] of years also asserted that they had rights under the Lott patents?

A. Yes. It did assert that it had rights under the Lott patents.

Q. Do you know whether or not his claims in that regard were ever settled until the 1932 agreement?

A. Hazel-Atlas claimed certain rights under the Lott patents as a result of its general license agreement from the Owens Company, and then Mr. Brady also asserted claims to the Lott patent on a certain basis. That was rather a gentlemen's agreement that he had with Mr. Owens, and there never was any settlement of those Hazel-Atlas claims so far as I know until 1932.

Q. Were these claims of Hazel-Atlas with respect to the Lott patents as well as with respect to the Brookfield patents matters of consideration when the '32 agreements were negotiated?

A. They were very important in connection with that agreement.

Mr. Middleton: I wish now, Your Honor, to go back to the licensing history, we having completed the transactions with the Hazel-Atlas Glass Company; go back to October, 1909, at which time the Owens Company made an agreement with the Charles Boldt Company.

I offer this agreement, dated October 28, 1909, as Exhibit O-6004.

Mr. Isseks: No objection.

The Court: It may be admitted.

Mr. Middleton: This is a short agreement, Your Honor, and I can't very well digest it, certainly not much better [fol. 11358] than to read some of the paragraphs.

(Excerpts of Exhibit O-6004 read by Mr. Middleton.)

In other words, this agreement in substance provides for a test period during which the Boldt Company will determine whether or not this new Owens Bottle Machine which is being put on the market will make whiskey flasks for them, and if it is satisfactory after the test period they will enter into an agreement.

The Court: You may suspend at that point. The bailiff may recess court until ten o'clock tomorrow morning.

(Night adjournment.)

[fol. 11359] (At 10:15 a. m., Thursday, January 15, 1942, the trial was resumed.)

Mr. Middleton: When we adjourned yesterday we had just offered the agreement between Owens Bottle Company and Charles Boldt Company, Exhibit O-6004. I notice that the transcript of yesterday misspells the word. It is "B-o-l-d-t".

The agreement of January 28, 1909, which is Exhibit Exhibit O-6004, was the agreement covering the three months' trial period during which they were a determine whether or not it was economical and advisable to try to make liquor flasks on the machine. That was then followed by an agreement dated January 22, 1910, which the government has in the bound volumes and which we will not present. I merely mention it for the connection.

The agreement on January 22, 1910, was the license itself to Boldt to make liquor bottles, and I do not care to pursue it any further.

The next license was the one dated January 18, 1911, by Owens Bottle Company to the Illinois Glass Company, which I care to mention for the purposes of this case. It covered pharmaceutical and druggists' ware, and we will offer that agreement as Exhibit O-6005.

Mr. Isseks: No objection.

The court: It may be admitted.

Mr. Middleton: Now that, Your Honor, completes what we care to offer to show the manner in which the restricted license system was applied in the early days of the Owens Company.

[fol. 11360] JOHN H. MCNERNEY, having resumed the stand, testified further in direct examination by Mr. Middleton as follows:

Q. Now, Mr. McNerney, I believe you stated you had been on the licensing committee of Owens for a great many years—for nearly twenty-five years?

A. Yes, I did.

Q. In the course of your duties on that committee have you had occasion to consider these licenses which we have put in, renewals of them or modifications of them, and other licenses?

A. Yes, they were under constant review and discussion.

Q. Will you state what, from your experience in that work in the twenty-five years you have been with the company, you have observed as to the origin of the practice of issuing restricted licenses,—what was the fundamental reason for issuing restricted licenses?

A. Well, manufacturers in the glass trade generally, themselves, limited their operations to specified fields. That is to say, there would be a liquor ware manufacturer, that was his field of operation, or there would be a milk bottle manufacturer, and he, at the time the machines were developed, was making only milk bottles, and it was natural, therefore, that the licenses should conform and be limited to the fields that he elected to operate in.

Q. Well, was that the manner in which the practice grew up, was it a conforming to the practice in the bottle manufacturing business?

A. That is correct; it was. I may say that these Owens [fol. 11361] machines, not only the original but the successive models that were introduced, were not finished products when they were handed to the trade; that is, in all cases I am quite sure there was a considerable degree of experimentation to be done. For instance, the original Owens machine was designed to make round bottles. Charles Boldt was the first man that was ever able to make a flask, an oval-shaped bottle, on a machine, and part of the consideration for that license was his agreement to experiment with the machine and his confidence that he could develop it so it would make a whiskey flask. The same thing as to the machine which was used later to make a panel bottle. The panel bottle is the kind of bottle like the vanilla extract bottle.

Q. With sunken sides?

A. Either with or without sunken sides. But that particular shape of rectangular shoulders and the square shape was very difficult to make, because it didn't follow the natural flow of the glass.

Q. When, Mr. McNerney, did the Owens Company go into the manufacturing business definitely, first own a factory?

A. Well, we always had, from the beginning, the factory, what we call Factory No. 1, on Wall St.

Q. That was experimental, though, was it not?

A. That was an experimental plant, although we tried as best we could to market its products, but it really got into business in a major way, I think for the first time, with the building of the Fairmont factory at Fairmont, West [fol. 11362] Virginia, where we made primarily catsups.

Q. What year was that you opened the Fairmont factory?

A. I have it here.

Mr. Isseks: Whatever counsel states is good enough for me.

Mr. Middleton: 1910. Mr. McNerney may consult his memorandum, if he wishes.

Q From 1910, the opening of the Fairmont factory owned by Owens, what is the fact as to whether or not the manufacturing business then was increased year by year?

Mr. Isseks: I will stipulate that, Your Honor.

A. We did increase our manufacturing business year by year. We started with the Fairmont factory and then built another very large factory,—and by the way, both of these factories were revolutionary in general construction as well as in the type of machines they operated. We operated the Clarksburg factory, and then followed with the—well there were some purchases of factories then of Graham and——

Q. All of that will show in your annual report, that is the general growth in total money, the general growth of your business?

A. Yes, the annual report each year gave the investment we had in the business.

Mr. Middleton: At this time I will ask to have marked, and offer, the annual reports of the Owens Bottle Machine Company from 1908 to 1916, inclusive.

Mr. Isseks: One exhibit?

Mr. Middleton: I intended separate exhibits. I think it is a little easier to refer to them.

[fol. 11363] Mr. Isseks: No objection.

Mr. Middleton: The report of 1908 will, then, be O-6006, and the rest follow.

(Report of 1909 being Exhibit O-6007; report of 1910 being Exhibit O-6008; report of 1911 being Exhibit O-6009;

report of 1912 being Exhibit O-6010; report of 1913 being Exhibit O-6011; report of 1914 being Exhibit O-6012; report of 1915 being Exhibit O-6013; and report of 1916 being Exhibit O-6014.)

The Court: They may be admitted.

Mr. Middleton: I offer these, Your Honor, without examining the witness in detail at all, for the purpose of showing the increase in the business of Owens-Illinois as a manufacturing company, the increase of its capitalization and of its assets, the increase in its sales and general activity, ending with the last report, which is offered as Exhibit 6014, which is for the year ending March 23, 1916, with total assets of almost $18,000,000 in the glass manufacturing business, and the increase year by year, of course, is shown by the individual reports.

Q. Now, Mr. McNerney, did the Owens-Illinois, or the Owens Company, the old Owens Bottle Machine Company, ever manufacture Owens machines for anyone other than itself and its licensees?

A. The Owens Bottle Machine Company never built the Owens bottle machine, either for itself or for its licensees; it never had any facilities for building complete machines; it was not a machine manufacturer, it was a bottle maker.

Q. Well, in the early days when it was engaged primarily in licensing, how did it obtain the machines [fol. 11364] which it licensed?

A. It employed skilled designers to design these machines and then submitted the blueprints, for the most part, to Kent-Owens Machine Company—rather, to the Kent Machine Company in those days, whose name was later changed to Kent-Owens Machine Company—and had the machines constructed on contract for it. Similarly, if the licensee wanted a machine, he wrote in to the company. You have in mind that the machines all varied,—that is, the fruit jar machine would not make prescription ware, or a catsup machine would not make milk bottles. The specifications varied for each manufacturer very considerably, and the machine had to be designed around that manufacturer's needs, which was done by the Owens designers, and then when the blueprints were completed the blueprints were let out of the Kent-Owens Machine Company to build the machines, on contract.

[fol. 11365] Q. Well, now, did the Owens Bottle Machine Company or the Owens Bottle Company, more recently, have any interest in the Kent-Owens Machine Company, either the original Kent Machine Company or the Kent-Owens Machine Company?

A. The Owens Bottle Company never had any interest in the Kent Machine Company, whose name was later changed to the Kent-Owens Machine Company; never owned any stock.

Q. And in the Owens Bottle Company, do you also include the Owens Bottle Machine Company?

A. The Owens Bottle Machine Company is the same as the Owens Bottle Company.

Q. At the present time does the Owens-Illinois Company, or has the Owens-Illinois Company at any time since the use of that name, had any interest, either directly or indirectly, in the Kent-Owens Machine Company?

A. No, the Owens-Illinois Company, which is the same company as the Owens Bottle Company, never had any interest in the Kent-Owens Machine Company, by way of stock or otherwise.

Q. How did the Owens-Illinois Glass Company, and its predecessors in name, procure the machines for its own use in the last ten, fifteen years—where have they been manufactured?

A. The Illinois Glass Company prior to the time that its assets were sold to the Owens Bottle Company had been making some of its own spare parts for machines; that is, not the base or the columns or spiders, but some of the minor parts. And when the Owens Bottle Company's engineering department was consolidated with the Alton Engineering Department, the machine shop of the old Illinois Glass Company, which is now the machine shop of the [fol. 11366] Owens-Illinois Glass Company, enlarged its facilities for making the machine parts, so that it is rather generally equipped today, and has been for the last five years or more, to make nearly all parts of the Owens bottle machine, and today practically all the parts are made in that—or made in that shop until its facilities were diverted to war work.

Q. Well, the Owens Bottle Company has never, while you have been with it, held itself out as willing to manufacture Owens machines for anyone?

A. That is correct.

Mr. Middleton: We call attention at this point to two Bock patents. We had intended to introduce them at this point separately because they rather fit into the picture that has been painted, but they have already been introduced in the bound book of Patents, which is Exhibit O-5953, and we merely call attention to them without re-introducing them; those were Bock patents No. 833,295, and No. 919,120.

Q. Mr. McNerney, do you recall in the middle teens, about the time when you became an officer of Owens Bottle Company, any discussion of any then new method of making bottles, or at least a method different from the use of the Owens suction machine?

A. Yes, I do. There was a great interest, a great commotion in the bottle industry over the rumors which were spreading at that time of the development of a competitive type of wholly automatic machines; you have in mind that at that time the only wholly automatic machine was the Owens suction type machine.

[fol. 11367] Q. Well, what was the type of machine of which you heard along in the middle teens?

A. It was that a machine was being developel which, instead of getting its charge of glass from the main pot of glass in the furnace by suction, was getting it by flow. In those days we called it a feeder device.

Q. Was the Hartford-Empire Company mentioned at that time, or the Hartford-Fairmont Company, rather?

A. Yes, there were many people trying to develop feeders in those days, and this group of people in Hartford were mentioned most prominently, I think, in that group at that time, and they were the ones that gave us the most concern.

Q. And what, if any, interest did Mr. Owens, so far as you had any personal knowledge, take in that matter at that time—what action, if any, did he take?

Mr. Isseks: To any conversation, Your Honor, we object. We don't object to any action by Mr. Owens. We don't object to any correspondence, Your Honor, any piece of paper of any kind.

Mr. Middleton: Well, I realize that the question is rather big, Your Honor; I have no pride in it.

Q. What, if any, action did Mr. Owens take, to your personal knowledge, in order to meet this rumor of the development of a competing bottle forming machine?

A. Well, Mr. Owens called—first of all, Mr. Owens made reports at these various meetings of his studies of the possibilities of this whole feeder situation. We had meetings at the No. 1 Factory every Sunday morning, at which Mr. [fol. 11368] Owens would hold forth on the blackboard concerning the possibilities of the feeder development, and during the course of those meetings we, of course, exchanged all the information we could concerning what others were doing.

Q. Now, was the Graham Glass Company mentioned in any of those reports or discussions?

A. Yes, the Graham Glass Company development was one of the very interesting commercial uses which we could get a good description of at that time, and we followed it very closely.

Q. Where was the Graham Glass Company located?

A. The Graham Glass Company's main plant was at Evansville, Indiana, and they had a smaller plant at Loogootee, Indiana, and then they had an interest in two plants in Oklahoma, one at Checotah, and one at Okmulgee.

Q. Well, do you know whether or not the Graham people had been experimenting with flow feeding processes?

A. Yes, the Graham people had been experimenting, and Mr. Owens and Joe Graham established at a very early date a contact—a friendly contact; Mr. Owens assisted Joe Graham, whom he liked very much, in every way he could reasonably do so, with advice and so on in connection with——

Mr. Isseks: Your Honor, I don't want to object, but I assume the witness was present when all this took place? If he wasn't, I move to strike it out.

Mr. Middleton: Well, I assume, Your Honor, some of the last statement would be general knowledge.

Q. Mr. McNerney, to what extent did you know from personal contact with Mr. Owens and Mr. Graham of their [fol. 11369] friendship—were you present at any times when that friendship was exhibited and they discussed these matters?

A. I used to have lunch with both of them.

Mr. Middleton: I take it the Court will understand that that is partially his knowledge and partially his general information; we don't claim that it is of great moment in the case.

Q. Now, Mr. McNerney, I hand you an exhibit marked O-6015, which appears to be a license agreement from the Homer Brooke Glass Company to the Owens Bottle Company, I believe. Were the Homer Brooke rights discussed in your presence during those days?

A. Yes, the Homer Brooke rights were often discussed in connection with the whole feeder development, and particularly with the development work that the Hazel-Atlas Glass Company was doing.

Mr. Middleton: Now, we offer, Your Honor, the exhibit just marked, which is the license agreement from Homer Brooke Glass Company to the Owens Company, dated——

Mr. Isseks: December 14?

Mr. Middleton: —December 14, 1915.

Mr. Isseks: No objection.

The Court: It may be admitted.

Mr. Middleton: As Exhibit O-6015; and with it we offer another license agreement dated the same day, December 14, 1915, which is the license from Owens, that is, the Owens Bottle Machine Company to the Graham Glass Company.

Mr. Isseks: No objection. Same exhibit number?

Mr. Middleton: This is Exhibit O-6016; that is the [fol. 11370] license from Owens to Graham.

Mr. Isseks: No objection.

The Court: It may be admitted.

Q. Now, Mr. McNerney, was the Graham Glass Company mentioned in this license of December 14, 1915, Exhibit O-6016, the one that we are referring to——

Mr. Isseks: We will stipulate to that.

A. Yes, sir, it was.

Q. The one with which Mr. Joe Graham was associated?

A. Yes, sir.

Q. Then at a later date did the Owens Bottle Machine Company acquire the Graham Company?

A. It acquired the assets of the Graham Glass Company, yes, sir.

Q. That was when, if you remember—1916, I believe?

A. I know about the date; it was in 1916, yes.

Q. Now, what if any steps to your knowledge did the Owens Company take immediately following the Brooke license and the purchase of the assets of the Graham Com-

pany; what steps did they take toward the development of a feeder as distinguished from the Owens suction machine?

A. Well, we had during all this period been studying the situation, and the engineering department had been designing and experimenting with various devices. We put the pressure on very much more at that time, and as soon as we acquired the right to use the Graham development, our engineering department directed its full attention to improving both the machine and the feeder, and we spent a great deal of money and a great deal of time and thought to develop the Graham machine into a better machine, and to develop first of all the Proeger divided cup feeder, which was what the Graham was using at that time, and later to [fol. 11371] substitute for the Proeger feeder, when it proved to be unsatisfactory, an acceptable plug feeder.

Q. Were additional engineers hired to carry on that work?

A. Yes, several that I had something to do with their employment were hired, and particularly a skilled engineer by the name of Mr. Cramer was employed, and was asked to do nothing except feeder development work.

Q. Do you know approximately how much was spent by Owens in that work undertaking to develop a feeder?

A. It was a very large sum. It would not be far—I would estimate over a million dollars.

Q. Well, as a result of the work, did Owens develop anything in the way of a plug feeder?

A. Yes, we did.

Q. And did you undertake to use it?

A. Yes, we developed the plug feeder and put it into commercial operation and licensed others to use it, and did install it in the plant of various other manufacturers.

Mr. Middleton: I now have had marked, Your Honor, a letter dated February 28th, 1918, from Clarence Brown, President of Owens Bottle Machine Company, addressed generally to bottle manufacturers, which has been identified as Exhibit O-6017.

Mr. Isseks: No objection.

The Court: It may be admitted.

Q. Mr. McNerney, were you familiar with those matters at the time that that letter was written?

Mr. Isseks: No dispute on that.

A. I was very familiar with this letter, because it pre-
[fol. 11372] cipitated quite a controversy in our office at the time, in which I took part, and when it was finally decided to send out this letter, it was my job to send it out, and I did send it out.

Q. Well, that was an offer of the development of Owens to the general manufacturing business, was it not?

A. Yes, this was a step taken by Mr. Brown and Mr. Owens to put the whole industry on notice that they should cease—or rather, should not interest themselves in the Hartford-Empire machine, and that we had a new machine which we proposed to offer which we thought would be better than the Hartford-Empire people could produce.

Q. And following that, certain licenses were issued covering the Graham machine, were they not?

A. Yes, we had a number of inquries as a result of this letter, and made several licenses.

Mr. Middleton: I wish now to offer, Your Honor, as Exhibit O-6018, a license agreement between the Owens Bottle Machine Company and the Coshocton Glass Company.

Mr. Isseks: Which one; what is the date?

Mr. Middleton: Dated April 13, 1917.

Mr. Isseks: I have no objection, Your Honor, but I assume it is not being urged that the Exhibit O-6018 was made after the letter of February 28, 1918, because the letter was almost ten months later.

Mr. Middleton: No, that one was made before.

Mr. Isseks: That is right; we have no objection to that.

The Court: It may be admitted.

Mr. Middleton: It was, however,—this license was made
[fol. 11373] after much of the money was spent in developing the Graham machine. I think that also will be conceded.

Mr. Middleton: Now, following that exhibit, I wish to offer as Exhibit 6019 another agreement between the Owens Bottle Company and the Coshocton Glass Company, this agreement being dated August 8th, 1922, and which cancelled the license agreement which has just been offered as Exhibit 6018.

Mr. Isseks: No objection.

The Court: It may be admitted.

Mr. Middleton: The result, as Your Honor will see, was that the license was issued and then later completely canceled.

Q. Mr. McNerney, do you know anything about the Coshocton Glass Company situation, which gave rise to the cancellation of that agreement?

A. Yes, sir. I am familiar with it.

Q. Very briefly, will you state in a few words what that situation was?

A. The Coshocton Glass Company had been manufacturers prior to the time the license was granted of beers and beverages, that is, carbonated waters, and that was a line that the machine was best suited to operate in. They operated that machine successfully in that particular line until prohibition, and just about the time that prohibition was enacted, there was a tremendous demand for bottles and people were paying high prices for beer bottles, and the people who operated the plant made a great deal of money—[fol. 11374] they were Frenchmen—and the prospects then looked to be gloomy in 1922, with prohibition coming, and together with the fortunes they made, that inclined them to retire from the business. So they did retire and cancelled the license.

Mr. Middleton: Now, I wish to offer as Exhibit O-6020 a license agreement dated May 7, 1918, between the Owens Bottle Company and Glenshaw Bottle Company. It also covered Graham machines.

Mr. Isseks: No objection.

Q. By the way, the Coshocton license covers Graham machines?

A. Yes.

Q. And the Glenshaw license covered Graham machines?

A. Yes, both of the licenses covered Graham machines and no Owens suction machine.

The Court: It may be admitted.

Mr. Middleton: With the Glenshaw license we offer Exhibit O-6021, an agreement of April 30, 1920, between the Owens Company and Glenshaw, which terminates the license.

Mr. Isseks: No objection.

Mr. Middleton: It shows on its face the license is surrendered.

The Court: It may be admitted.

Mr. Middleton: The Glenshaw license shows on its face the particular ware to be manufactured, "Bottles for beer, porter, ale, and all other malted beverages. Bottles for soda water and all other carbonated beverages other than fruit juices, wines and liquors. And, narrow-necked bottles for non-carbonated waters." In other words, it was a somewhat limited license.

[fol. 11375] The next license we wish to offer is from Owens Bottle to Turner Brothers Company, and it is dated September 9, 1918, offered as Exhibit O-6022.

Mr. Isseks: No objection.

The Court: It may be admitted.

Mr. Middleton: This license is limited to bottles containing catsup, chili sauce, salad dressing and non-carbonated fruit juices,—non-exclusive license. By amendment January 13, 1918, it was amended to include oyster cocktail sauce bottles.

Now, this license to Turner Brothers was terminated by another agreement dated December 24, 1919, which we now offer as Exhibit O-6023.

Mr. Isseks: No objection.

The Court: It may be admitted.

Q. Those were the only licenses issued on the Graham machine, were they not, Mr. McNerney?

A. Yes, that is the only American license. We have issued a number of foreign licenses.

Q. With the cancelation of this license we have just discussed there were no outstanding licenses in this country on the Graham machine?

A. That is correct.

Q. And those have terminated not more recently than 1922?

A. Yes.

Q. Mr. McNerney, did you participate in any discussions of the Lott patent prior to 1924?

A. Yes. I participated in a number of those discussions and negotiated with Mr. Lott in connection with the Lott acquisition.

[fol. 11376] Q. What was the reason for the interest of the company at that time in the Lott patent, as you then understood it and as you now understand it?

A. We had a tremendous investment in plants and bottle-making machinery, and at that time were operating in most of our plants Owens suction machines. A new feeder development which came along threatened our very existence. We felt we had to have a position in the feeder industry in order to be in such situation that if the feeder machine developed to be ultimately the superior machine for making bottles we would have as good equipment as anybody. As a matter of self-protection, therefore, we had to be interested in feeders, and we felt our job was really in the industry to develop and offer to the trade the best type bottle machine we could. The Lott patent, we understood, was a very early patent which seemed to control that whole feeder development.

Q. Recognition of the Lott patent and its importance as you have outlined it, was then taken by the Board of the Company, was it not, by the Executive Committee?

A. Jack Biggers and Mr. Owens were the first ones who negotiated the option with Mr. Lott, and I don't remember at the moment whether they went to the Board with that first option or not.

Mr. Middleton: We now present Exhibit O-6024, report of J. D. Biggers to the Executive Committee of Owens Bottle Machine Company, dated April 29, 1918.

Mr. Isseks: No objection.

[fol. 11377] The Court: It may be admitted.

(Exhibit O-6024 is read by Mr. Middleton.)

Mr. Middleton: We offer next as Exhibit O-6025 another report of J. D. Biggers dated May 22nd, 1918.

Mr. Isseks: No objection.

The Court: It may be admitted.

(Exhibit O-6025 is read by Mr. Middleton.)

Q. Mr. NcNerney, I believe you said that you were present when the Lott patent was discussed on various occasions, is that right?

A. Yes.

Q. To what extent did you particpate with Mr. Mike Owens himself in discussions of the Lott patent prior to 1924?

A. Prior to 1924?

Q. That is between the date purchased there and 1924?

A. Well, Mr. Owens pretty much took the lead in the whole Lott purchase situation. That is, he recognized the importance of the Lott patent and insisted that it be purchased. Mr. Lott was a rather tiring man to deal with, so very often I had to have the discussions with Mr. Lott, acting pursuant to Mr. Owens' direction, until we got to the point where there was some deal ready to be made, and then Mr. Owens would sit in on the discussions. But in general Herbert Baker, who was associated with me on the License Committee, and I carried on most of the discussions with Lott, which had run over a period of months.

Q. What was the importance of Lott, as you then understood it, with respect to the Hartford-Fairmont development?

A. We felt that the Lott patent was the earliest patent in the field which dominated or controlled the whole plug [fol. 11378] or gob feeding art.

Q. Was any effort made on the part of the Owens Company to develop mechanisms embodying the Lott patent, which utilized the principle?

A. Yes. We developed a Lott feeder and operated it at our No. 1 factory.

Q. Did this development work on feeder and former equipment continue down to 1924?

A. Yes, it did.

Q. Or some subsequent date?

A. Yes, it did. It did not cease in 1924, as I recall it.

Q. Did it continue after that?

A. I can't speak too definitely on that. That was at the time of the Hartford-Empire agreement, and Hartford under that agreement got a cross license under our patents, and whether the experimental work terminated then and there I don't know. I do know certainly the loose ends were pulled together, but the amount of money we had been spending for that type of work was very much reduced from that time on.

[fol. 11379] Q. Now, Mr. Nerney, do you have any recollection with respect to a proposition that Owens Bottle Machine Company buy the Hartford-Fairmont Company's assets?

A. I recollect that proposition very well.

Q. Do you know about when that question first arose?

A. Well, I couldn't say precisely when it first arose, but

the discussions were going on when I first went over to the Owens Bottle Machine Company in 1917.

Q. You were then associated closely with Mr. Brown?

A. Yes. In fact the discussions, I remember, started prior to the time I went over there.

Mr. Middleton: I present now, Your Honor, in that connection, a letter written by Clarence Brown and J. D. Biggers, dated February 12, 1918, which has been marked Exhibit O-6026, to Mr. Arkell.

Mr. Isseks: No objection.

The Court: Admitted.

(Exhibit O-6026 read by Mr. Peters.)

Mr. Middleton: There is attached to the letter which has just been read, the comment that this letter was submitted to the board of directors. That was not part of the original letter but it may remain there for the information of everyone.

Mr. Isseks: No objection.

Q. Now, Mr. McNerney, did you say that the discussion between Hartford and Owens had been going on prior to the date of the letter which has just been read, for a considerable time?

A. Yes, sir, it had been going on.

Q. Who, as you understood it, initiated the discussion, or [fol. 11380] the idea of Owens possibly purchasing Hartford,—was it initiated by Owens or by Hartford?

A. The letter indicates it was initiated by Hartford.

Q. Such deal was never worked out, was it?

A. No, we never could get together with them.

(Recess taken.)

Mr. Middleton: Just for the purpose of completing the record, we wish at this time to offer two copies of Bills of Complaint. The one is based upon the Lott patents and will be marked Exhibit O-6027. In case of the Owens Bottle Company vs. J. T. & A. Hamilton Company, Equity No. 937.

The other is marked Exhibit O-6028, copy of Bill of Complaint in the case of Hazel-Atlas Glass Company and the Owens Bottle Company vs. J. T. & A. Hamilton Company, on the two Brookfield patents, Equity No. 938.

Mr. Isseks: No objection.

The Court: They may be admitted.

Mr. Middleton: We now present, as Exhibit O-6029, what purports to be an excerpt from the report to the executive committee of Owens, dated March 17, 1924, the report having been made by Messrs. Biggers and Baker. Any question about that?

Mr. Isseks: No question about it; no objection to it. The report referred to in the excerpt is Exhibit 893.

The Court: It may be admitted.

(Exhibit O-6029 read by Mr. Middleton.)

Q. Mr. McNerney, you were charged with the duty, at [fols. 11381-11382] that time, of drawing the minutes?

A. I was secretary of the committee.

Q. What was your understanding as to the action then taken; was the contract to be drawn to be in settlement of the suit or was it the other way around? What was the purpose, as you understood it, of making an agreement at that time with Hartford-Empire?

A. We were in litigation with Hartford-Empire Company and Mr. Blair was authorized to press that litigation and to settle it if he could.

Q. Was that litigation these Hamilton suits?

A. Yes, that was the litigation that involved the Hartford feeder.

Mr. Middleton: We now offer as Exhibit O-6030, a group of papers consisting of twelve pages, which comprise excerpts from the minutes of the executive committee and the board of directors of the Owens Bottle Machine Company.

* * * * * * *

[fol. 11383] Mr. Middleton: When Mr. McNerney was on the stand briefly on a previous occasion he testified, at pages 4139 and 4141 of the transcript, briefly, with respect to journal voucher No. 1507. We had the journal voucher here at that time, but we did not make it an exhibit. That was in connection with what he termed a final entry, and I wish now to have a photostat copy of that page, journal voucher No. 1507, sheet 3, marked as Exhibit O-6031.

Mr. Isseks: No objection.

Mr. Middleton: And we offer it.

The Court: It may be admitted.

Q. Mr. McNerney, I am handing you now this Exhibit O-6031, sheet 3 of journal voucher No. 1507, and I will ask you whether or not that is a final entry covering the handling of the joint account with Hartford, or, rather, the account covering the divisible income with Hartford-Empire Company, which arose out of the collection and division of royalty?

• • • • • • •

[fol. 11384] The Witness: This is rather fine print, and I just wanted to read it carefully before I testified.

This appears to be the final entry closing out our account with the Hartford-Empire Company in November, 1935.

Q. Have you determined from the Owens accounting records, Mr. McNerney, whether or not Owens, at any time since the making of that entry, shared any of the legal expense of Hartford-Empire Company?

A. Yes, I have checked the records and have been unable to find any place where we shared any further legal expense with Hartford-Empire Company since that date.

Q. What would that be,—since November of 1935?

A. Yes, sir.

Q. Since the making of the 1935 contract?

A. Yes, sir.

Q. Well now, Mr. McNerney, you have been on one of three committees of Owens for a long period of years that I did not inquire about. Are you at present on the planning committee?

A. Yes, I am a member of the planning committee.

Q. And before that you were a member of what committee rather analogous to the planning committee, the predecessor of the planning committee—operating committee, was it?

A. Well, yes, I have been on either the operating committee or directing committee or the planning committee continuously for twenty years, I guess.

Q. Well, are those the committees which successively [fol. 11385] have next to the board of directors in authority in the management of the business?

A. No, the operating committee was, I would say, a lower committee, subordinate to the directing committee. The operating committee handled, of course, the vast bulk of the company's business, which was manufacturing bottles,

and the directing committee handled financial matters and policy questions, and so on. And appropriations—the appropriation originated with the operating committee, and the directing committee, if the amount was over a certain amount—about $10,000—the directing committee authorized the appropriation; and the planning committee was a sort of a top committee, to which the directing committees of the various divisions of the business, such as glass block or glass container, reported.

Q. How long have you been a member of the planning committee?

A. Since its establishment.

Q. When was that?

A. I would estimate about five years.

Q. Carry it back to about 1936?

A. That is my best just now.

Q. That is when the planning committee was established?

A. Yes, sir.

Q. As a member——

A. I would like to correct that. It went back of 1936. That was prior to 1936. I would say at least to 1935.

Q. Does the directing committee still function, or did it go out of existence.

[fol. 11386] A. There is a directing committee of the Glass Containers Division and a directing committee of the Insulux Products Division, both of which still function.

Q. Are you still a member of the directing committee?

A. Yes. I am a member, and secretary, of all those committees.

Q. As well as the planning committee?

A. Yes.

Q. How long have you been a member of those directing committees?

A. Since they were started, which goes back a good six years, and prior to that time we had other equivalent committees by other names.

Q. Operating committee, for instance?

A. Executive committee, and at one time we called it the administrative committee, and I have always been a member of those committees.

Q. Of course, we rather overlooked the executive committee itself, which perhaps is next to the board, I assume,—the executive committee is really about the planning committee?

A. Yes. At the earlier date the executive committee was not a committee composed solely of board members, which it is today.

Q. Now, in the performance of the duties of these committees, as well as the duties of secretary-treasurer and your other duties with the company, have you been in a position to know the policy of Owens-Illinois Glass Company prior to and since 1935 with respect to its relation [fol. 11387] with the Hartford-Empire Company?

A. Yes. I have had a good opportunity to know what that policy is.

Q. Will you state what the policy of the company has been since the contract of 1935 with regard to its relations to Hartford-Empire Company?

A. Beginning in 1935 we became a licensee of the Hartford-Empire Company. Rather, I should say, we continued to be a licensee of Hartford-Empire Company on the same basis as any other licensee of their inventions and equipment. We used their machines in our factories very extensively to make bottles and got from them about the same service that anybody else gets, paid them exactly the same rates of royalty, and our licenses are all printed-form licenses which are the same licenses that other licensees have. We have no other relation with Hartford-Empire Company. The relationship which began in 1924 growing out of the litigation between ourselves and Hartford, was terminated in 1935. We had been completely disconnected from them as to everything pertaining to that contract.

Q. Since 1935 has Owens Company shared any of the expense of Hartford?

A. None whatever.

Q. What has been the policy, if you know, with respect to consulting with Hartford-Empire, since 1935, with regard to Hartford's granting licenses to anyone who might want them?

A. We have had no policy of consulting with Hartford-Empire in that connection. In fact, our policy has been the [fol. 11388] opposite. It has been to completely disassociate ourselves from the Hartford-Empire licensing plan and operation.

Q. Has there, to your knowledge, been any time when Hartford-Empire Company did consult Owens at all with respect to the granting of any licenses, since 1935?

A. I know of no instance where they consulted us since 1935 in regard to granting of licenses.

Q. Mr. McNerney, can you state whether or not, at any time, the Owens Company sold or leased lehrs for annealing ware to anyone for use by anyone other than ourselves?

A. Yes. We did in the early days. I don't know whether you refer to that. We developed the flat pan lehr, which is part of the equipment which we supply generally to licensees of our own suction machine.

Q. How early was that?

A. I should not say flat pan lehr. I would like to correct that. That wasn't the flat-pan lehr. We had a long series of lehr pans with individual slots in them into which the bottle fell, neck downward, which held the bottle in its travel through the lehr, in those openings.

Q. Now, isn't it a fact, Mr. McNerney, such licensing of lehrs as it was done was years ago and that was only to licensees of Owens bottle machines?

A. Yes. They never licensed a lehr, to my knowledge, to anyone except the users of the Owens suction machines.

Q. We were never in the business, then, of making or licensing lehrs to the public generally?

A. That is true. The lehr I speak of went out of use, even [fol. 11389] in our own factories, a great many years ago, at least ten years ago.

Mr. Middleton: I wish, Your Honor, to refer briefly to three exhibits which were introduced by the government quite some time ago, 712, 713 and 1555. These letters mentioned Kimble Glass Company and also mentioned Mr. C. B. Belknap. They are dated in 1939,—April 15, April 21 and April 26, 1939.

Q. Mr. McNerney, you are familiar with the Kimble Glass Company?

A. Yes. I know who it is.

Q. Are you a stockholder in it?

A. No, sir.

Q. Will you read those three exhibits which I have just handed you, so that you may be fairly familiar with them? Just take a moment and glance through the three exhibits.

A. (Witness looks over Exhibits 712, 713 and 1555.)

Q. Was Owens-Illinois Glass Company, in 1939, financially interested in the Kimble Glass Company?

A. No. It never had any financial interest in the Kimble Company.

Q. Never was a stockholder?

A. Never was a stockholder.

Q. Reference is made in Exhibit 712 to Wheaton. It reads:

"I am having the Wheaton matter looked up and reported to you."

That is a letter to W. H. Curtiss, vice-president-secretary of the Corning Glass Works from F. Goodwin Smith. Do [fol. 11390] you know what the Wheaton matter was, referred to there?

A. That was the T. C. Wheaton Glass Company, who were bottle manufacturers.

Q. Where were they located, do you know?

A. They were located in the east. I do not, for the moment, know whether it was in New Jersey or whether it was in Baltimore. It was in one of those two locations.

Q. What line did the Wheaton Company manufacture, do you know?

A. They were specialty manufacturers, as I recall it, operated in unusual shapes of bottles, of perfume bottles, small medicine bottles.

Q. Did Owens-Illinois have any interest in them?

A. We never had any interest in them.

Q. Now, having read these letters, can you state whether or not Owens-Illinois had any interest in the matters discussed in these letters, that were being handled in accordance with these letters,—did Owens-Illinois, as a company, have any interest in that?

A. In the question as to whether——

Q. In the matters which were being discussed in these three letters?

A. No. I don't see how that related in any way to our business.

[fol. 11391] Q. In so far as Mr. C. B. Belknap at that time had anything to do with these transactions, did he represent Owens-Illinois Glass Company in any capacity?

A. No, he did not represent us in that connection.

Q. Do you know whether or not Mr. C. B. Belknap personally had some interest in Kimble Glass Company as an individual, either as a stockholder or by way of employment?

A. Yes, he did have a relationship with Kimble Glass Company. He represented them, or his firm represented them, in certain patent matters.

Q. Well, in that representation did he in any way represent Owens-Illinois Glass Company?

A. No, Mr. Belknap was permitted to do outside patent work while he was in our employ, and this was one of his clients.

Q. And you would say, would you, that these letters do not relate to anything in which Owens-Illinois was interested, or in which Mr. Belknap represented the Owens-Illinois Company?

A. Yes, it was something entirely outside of the business; had no relation to our operation.

Mr. Middleton: I wish now to present, Your Honor, two letters written in 1935. One is by Mr. William C. Church to the Owens-Illinois, dated November 12, 1935, identified as Exhibit O-6032, and the other is the answer to that letter, written by C. B. Belknap, vice-president of Owens, to William C. Church at San Antonio, Texas, dated November 14, 1935. This second letter is identified as Exhibit O-6033.

The Court: They may be admitted.

Mr. Middleton: I shall read them.

[fol. 11392] (Mr. Middleton reads Exhibit O-6032 and Exhibit O-6033.)

Q. Mr. McNerney, has Owens-Illinois Glass Company ever had a patent suit since 1935, to your knowledge,—unless you call this one, which of course I do not include in my question?

A. Well, we have had no patent suits involving glass making machines or bottles.

Q. That is what I am referring to.

A. Yes.

Q. At yesterday's session, Mr. McNerney, an exhibit was introduced as O-5988, which is a tabulation of expenditures by Owens for rehabilitation and rebuilding of the various factories of Owens; I don't know whether you have had an opportunity to look at it. It covers a period beginning '35 and running to date. I would like to ask you just one or two questions concerning the source of the money which was used to finance those rehabilitations and improvements. Did Owens borrow any substantial amount of money since 1935 to help finance that rehabilitation program?

A. Yes, sir. We put out an issue of $15,000,000 of debentures August 1, 1939, and in addition to that borrowed a large sum of money from Continental Illinois National Bank of Chicago, to pay part of the cost of these factory rebuilding, improvements, and enlargements. Prior to that debenture issue we had borrowed a large amount of money from the Continental Illinois Bank on current loans, and from other sources, and then we permanently financed those borrowings by the $15,000,000 debenture issue, and then in addition to the $15,000,000 debenture issue, borrowed additional [fol. 11393] sums from the bank.

Q. What period did those debentures cover, do you recall —how long were they to run?

A. They were ten year serial maturities, beginning August 1st, 1939—no, originally they were fifteen year serial maturities beginning August 1, 1939, and maturing a million dollars each year after that.

Q. And aside from the money which was borrowed, as you have stated, was the balance of the money used out of the accumulated surplus of the company?

A. Yes, and of course the loan has been repaid in large part out of the accumulated earnings of the company.

Q. Now, Mr. McNerney, leaving that subject and going to an entirely different one, do you know in a general way the Cupples Company of St. Louis, and the business it is in?

A. Yes, I do.

Q. Very briefly, state what the nature of the business is done by that company, and its importance?

A. The Cupples Company, of St. Louis, is a very large and well-established organization selling a general line of merchandise. They get out a catalog which shows everything from a clothes pin or clothes line to a glass bottle or a laundry tub, and they distribute all this merchandise pretty well over the country, but they are especially effective and known in the south. They sell to the wholesale grocers and jobbing houses in the south.

Q. Do you know approximately how long the Cupples Company has been established, doing business?

A. No. My first close contact with that situation was in [fol. 11394] 1929, but they were well known for many years —I don't know how long.

Mr. Middleton: I think probably the government will concede that they have been in business some seventy-five years.

Mr. Isseks: I don't know anything about it. I don't know the point about it. I make no objection.

Mr. Middleton: That is at least our information. We wish at this time to offer as Exhibit O-6034 a contract between the Illinois Glass Company and the Cupples Company, dated December 30, 1927. This is a contract covering the sale by Cupples Company of the domestic fruit jar production of the Illinois Glass Company made before Owens purchased the assets of the Illinois, and then it was taken over by the Owens-Illinois Company—that is, the contract was.

Q. This agreement is still in effect, is it not, Mr. McNerney? This agreement has never been canceled or terminated?

A. That is correct, yes.

Mr. Middleton: And it gave to the Cupples Company the exclusive—or made the Cupples Company the exclusive sales agent for the fruit jars made by the Illinois Company and now by the Owens-Illinois Company, and that in substance is what the agreement provides. I am offering it, Your Honor.

The Court: It may be admitted.

Q. Mr. McNerney, do you know whether or not the Cupples Company has handled fruit jars exclusively, the production of Owens-Illinois Glass Company fruit jars exclusively since that time?

A. Yes, sir, they have marketed them exclusively since that time.

[fol. 11395] Q. Now, through what medium is it necessary to market domestic fruit jars?

A. Well, the outlet for domestic fruit jars is the retail grocer, who sells them to the housewives, and who in turn buys the fruit jars from the wholesale grocer.

Q. To whom does the Cupples Company sell the domestic fruit jar production of Owens?

A. Sells it to the wholesale grocers throughout the country.

Q. Does the Owens sales organization contact the grocery trade, or the wholesale grocery jobbers for any purpose in selling the production of Owens-Illinois?

A. No, we have no facilities for contacting that trade—no other item that we would sell to people in that business.

Q. Then domestic fruit jars cannot be handled through the other usual sales organization of Owens; is that a fact?

A. It would be altogether too costly to sell one small item in a line to a jobber. To justify the selling expense of contacting the jobber you would have to have a large number of items over which the sales overhead could be spread. The sales expense would eat us up if we attempted to enter that field with just that single small item.

Q. And the Cupples Company has an organization which does contact the grocery trade, does it?

A. Yes, they are in contact with the trade.

Q. And has that been the condition over all the years that this contact has been in force with them?

A. Yes, that is the way they function.

Q. Now, Mr. McNerney, has the Owens Company at any [fol. 11396] time during this contract manufactured the caps for the domestic fruit jars which it marketed?

A. No, we have no facilities for manufacturing fruit jar caps, which is, of course, a very important part of the sale.

Q. From whom has the Owens Company always procured the caps for the domestic fruit jar?

A. The Aluminum Corporation, or a subsidiary of the Aluminum Corporation, whose name I don't recall for the moment, makes the caps that are used on this particular type of fruit jar that we make.

Q. Then there is a rubber ring that goes with those jars, is there not?

A. Yes, sir.

Q. To seal it?

A. Yes, sir.

Q. Does Owens, or has Owens at any time manufactured the rubber rings?

A. No, we have never been in a position to manufacture our rubber rings.

Q. Well, who has furnished them throughout the life of this agreement?

A. Well, at the moment I can't recall.

Mr. Middleton: I will state, subject to your verification, if the government doesn't object, that that is an item that is furnished by Cupples itself.

The Witness: Yes, that is right.

Mr. Middleton: You know that as a fact, I believe, do you not, gentlemen?

[fol. 11397] The Witness: Well, that is right, since I am reminded of it.

Q. Does the Cupples Company have facilities for producing rubber rings and other rubber goods?

A. Yes, sir, it has a factory for that purpose.

Q. And they have supplied the rubber rings for these jars at all times?

A. Yes, sir.

Q. Has the Owens Company expended any money during the years of this contract for advertising or sales promotion for the sale of these jars?

A. Oh, yes. We have had to expend an amount to push the sales of these jars in competition with other manufacturers.

Q. Well, what is the name that Owens has been using for the domestic fruit jar put out by Owens?

A. We took the name that the Illinois Glass Company had been using, the Presto jar.

Q. Now, this jar which we call the Presto jar is designed for what is called domestic use, is it not?

A. Yes.

Q. As contrasted with packers' jars?

A. That is right.

Mr. Middleton: I have here, Your Honor, quite a group of miscellaneous copies of advertisements which I have shown to Mr. Isseks, and I am rather inclined to feel that Mr. Isseks won't object seriously if we just offer these without very much comment as the advertising, or a portion of the advertising done with respect to fruit jars.

Mr. Isseks: If he wants it in, Your Honor, I can't stop [fol. 11398] them.

Q. Mr. McNerney, will you take this group of papers and look them over and see whether you can say whether or not that represents at least some of the advertising done to promote the sale of Presto fruit jars?

A. Yes, this is part of the advertising that was used to promote the sale of Presto fruit jars.

Q. And did Owens-Illinois pay any part for this advertising, and the other that was done?

A. Yes, we had an arrangement with the Cupples Company under which we would share a part of their advertising expense in connection with these Presto jars.

Q. Did anyone else share it?

A. Yes, the makers of the caps likewise shared that expense.

Q. Now, in addition to advertising such as is indicated by these papers, which I intend to mark as an exhibit, was any radio advertising done over the period of years 1930 to date?

A. Yes, we hit that market with every type of advertising that seemed to be effective,—radio, and we had demonstrators out, and we had wagons painted white with glass sides on which were displayed Presto jars filled with all kinds of fruits and vegetables.

The Court: The bailiff may recess court until 1:45.

(Noon recess.)

[fol. 11399] (At 1:45 p. m., Thursday, January 15, 1942, the trial was resumed.)

The Court: Proceed.

Mr. Middleton: Just before the noon adjournment, Mr. McNerney had stated in a general way that this group of papers which I had in my hand were representative advertisements with respect to the Presto domestic fruit jar, and I wish to have these marked and present them as an exhibit. I will be glad to be guided by the Court as to whether you want a separate number on each of these. It may be a little more difficult to handle them as one exhibit than separately.

The Court: If they are fastened together——

Mr. Middleton: They aren't, and they are all kinds of shapes and sizes.

The Court: Without objection, they will be admitted.

Mr. Middleton: Well, suppose we indicate the number and then give them one exhibit number and put them in an envelope for the Clerk. I will merely call attention to what they are.

The Court: All right.

Mr. Middleton: Exhibit O-6035 will consist of this group of papers comprising eleven separate papers marked letters "A" to "K", inclusive.

The first, as Your Honor will see, is a broadside, or partial broadside, of an advertisement of what was the 1930 product. Then there is another undated copy of an adver- [fol. 11400] tisement. Then an advertisement clipped from

the Oklahoma Farmer and Stockman in 1933. Another copy of the advertisement that was run in magazines in 1934 and subsequently, a single page entitled "Safety in the Canning". The next is a litle booklet of recipes. That was used in 1934 to 1938, which bears the name The Cupples Company.

Q. It is your understanding this was given out by Cupples Company, Mr. McNerney?

A. Yes, sir.

Mr. Middleton: And on the cover of that is the picture of the Presto home canning jar. And also another such picture on the back of it.

The next is a picture of a truck.

Q. Mr. McNerney, is that a picture of a truck which you say was used to demonstrate the Presto jar?

A. That is a picture of one of a fleet of trucks that was used for that purpose.

Mr. Middleton: And the next is a pamphlet of eight pages entitled "This is the Year to Push Presto Profits". 1941 is the date of that.

Then the next is a broadside of Owens-Illinois Glass Company advertisement bearing date May 24, 1941, indicating it is taken from The Saturday Evening Post. I call attention to the fact that at the top of the broadside, half of the top line is devoted to the advertising of Presto jars, and a similar broadside from Colliers of June 21, 1941, with a similar line devoted to the pictures and advertisement of Presto jars.

[fol. 11401] Q. Mr. McNerney, did you ascertain the amount expended by Owens for advertising and sales promotion cost with respect to Presto jars, for the years 1930 to '41?

A. Yes, I did.

Q. I hand you a tabulation which is entitled, "Owens-Illinois Glass Company, Presto Fruit Jars Advertising and Sales Promotion", and ask you whether or not those are the figures which you ascertained from the accounting records of your company?

A. They are the figures.

Mr. Middleton: I would like, Your Honor, to have this tabulation identified as Exhibit O-6036, and offer it in evidence.

Mr. Isseks: No objection.

The Court: It may be admitted.

Mr. Middleton: Without reading this entire exhibit, I call attention to the fact that the cost of advertising and sales promotion with respect to Presto jars, to the Owens Company, ran approximately $9,000 per year from 1930 to 1934, and that for the next four years subsequent to 1934 the cost ran from about $13,000 to about $16,000; it increased during those years.

Q. Now, Mr. McNerney, is this tabulation which we have just referred to and offered as Exhibit O-6036, all of the cost of advertising and sales promotion, all that was expended, or is this just Owens' proportion of it?

A. No, that just represents the part of it our company paid. There was an arrangement under which the Cupples Company and the manufacturers of the caps, the Aluminum [fol. 11402] Company or its subsidiary, and ourselves, should each contribute about a third of the advertising expense. Our percentage actually ran more than a third because our interest was greater than the cap people, but, broadly speaking, that expenditure of ours, which totalled approximately $109,000, represents one-third of the sales promotion and advertising expense expended for pushing those jars.

Q. So that substantially twice that much was paid by the other two people who were interested in the marketing of those jars?

A. That is correct.

Q. And during all those years?

A. Yes, sir.

Q. Why is there no figure for the years 1928 and 1929 on this tabulation?

A. Well, in 1928 the Illinois Glass Company was merchandising these jars through Cupples, and in 1929 was the year that we merged with the Illinois Glass Company, and those would be in the Illinois Glass Company's records, I think; at least they weren't available in our file.

Q. I would like to ask you one general question: that is whether or not, beginning with 1933 and for the years sub-

sequent to that, down to date, has Owens-Illinois Glass Company made all of the domestic fruit jars it could sell?

A. Yes, sir.

Q. And have they consistently undertaken to promote the sale of domestic fruit jars made by it, since 1933?

A. Yes, sir.

Q. Has there been any limitation upon the number of fruit [fol. 11403] jars that they either made or sold since that time?

A. None that I know of.

Mr. Middleton: That completes the examination at this time, Your Honor.

The Court: Any questions by any of the other defendants?

Mr. Parham: Your Honor, I have one question I would like to ask.

Further direct examination.

By Mr. Parham:

Q. Mr. McNerney, in connection with the three license agreements from Owens to Coshocton, Glenshaw and Turner, being exhibits respectively O-6018, O-6020 and O-6022, were feeders furnished to the licensees by the Owens Company, and if so, what type of feeders were they?

A. We furnished a divided-cup feeder to Coshocton Glass Company, and a diviced-cup feeder to Turner Brothers, but there was no feeder to Glenshaw, in fact there was no installation of any machinery by Glenshaw, the license being cancelled.

Q. That feeder is what is commonly called a Graham, or Proeger cup?

A. The Graham divided-cup feeder, which was what Proeger was operating when we purchased the Graham Company.

Cross-examination.

By Mr. Isseks:

Q. Mr. McNerney, you testified to the reasons of the cancellation of the Coshocton agreement in 1918. What was the reason for the cancellation of the Turner agreement? You didn't testify to that.

A. The equipment wasn't satisfactory for the manufac-
[fol. 11404] ture of the type of ware that Turner was making.

Q. What was the reason for cancelling the Glenshaw license?

A. I don't recall why Glenshaw sought to have it cancelled. It was done at Glenshaw's request.

Q. Now, in 1941 the volume of glass containers has been greater than in 1940?

A. The volume of containers manufactured and shipped both has been greater.

Q. Substantially greater?

A. By the industry as a whole.

Q. And by your company.

A. By our company.

Q. And by the industry as a whole, too?

A. Yes.

Q. And the volume in 1940 was greater than in 1939, was it not, by your company?

A. Yes, sir.

Q. Now, you testified that Owens-Illinois Glass Company owned no stock in Kent-Owens. Do you know who the stockholders of Kent-Owens are?

A. Well, in a general way, yes.

Q. The Walbridge Estate has large stockholdings in Kent-Owens, have they not?

A. I don't think they own any stock in Kent-Owens.

Q. Who are the stockholders, as far as you know?

A. The concern was sold out to the employees of the company about ten years ago.

Q. At that time who owned the stock, about ten years
[fol. 11405] ago when it was sold out?

A. I think Mr. Walbridge owned the most of it.

Q. The same Mr. Walbridge who had been an executive of the Owens-Illinois?

A. He had previously been an executive of the Owens-Illinois.

Q. It is a fair statement that up to the time it was sold to the stockholders of the Kent-Owens Company, a substantial number of stockholders of Owens-Illinois owned substantially all of the stock of the Kent-Owens Company?

A. I don't know how you define a "substantial" stockholder of Owens-Illinois. Mr. Walbridge did not own as much as two per cent of the stock of Owens-Illinois.

Q. But he did have stock in Owens-Illinois?

A. He had some stock in Owens-Illinois.

Q. And before the merger in 1929 he owned more stock, his percentage was greater in the Owens Bottle Company?

A. No, it was not.

Q. It was not; it was the same two per cent before and after the merger?

A. You see, the stock of the company wasn't changed after the merger. There was, I think, 20,000 common shares issued as the result of the merger to the Illinois Glass Company, which did not include the stock of the allied companies.

Q. He didn't have any more stock than he did after the merger?

A. No.

[fol. 11406] Q. Didn't they get some stock rights, too, as part of the merger?

A. No.

Q. They did not? Now, you testified that Owens-Illinois had no stock interest in the Kimble Glass Company?

A. Yes, sir.

Q. Are you familiar with the stockholdings of the Illinois Glass Company, of which Mr. Levis was the head until its dissolution?

A. I had a list of their stockholdings at the time the Illinois Glass Company was dissolved.

Q. And didn't they own stock in the Kimble Glass Company?

A. That list did not show that they owned stock—well, wait a minute; I wouldn't be too sure of that. I can easily look it up.

Q. Well, what was your understanding—was it your understanding that Mr. Levis—the Illinois Glass Company, the stockholding company, had some interest in the Kimble Glass Company?

A. The difficulty in my mind is this: I am not quite clear at the moment whether it was the Illinois Glass Company which owned some stock in the Kimble Glass Company, or whether it was some of Mr. Levis' personal stock.

Q. That is good enough for me—one or the other?

A. One or the other.

Mr. Isseks: Thank you very much.

Q. Now, you testified this morning, and it will be page 10049 of the record, as follows:

"Beginning in 1935 we became a licensee of the Hartford-Empire Company. Rather, I should say, we continued to be a licensee of Hartford-Empire Company on the same [fol. 11407] basis as any other licensee of their inventions and equipment."

That was true, according to your understanding this morning?

A. That is right.

Q. And that is your position, that Owens, since November, 1935, has no greater right in Hartford-Empire than other licensees of Hartford?

A. That is correct.

Q. And that position of yours is just as accurate as all the other testimony you have given?

A. Well, I think I made a general statement there. Of course, I was referring to the standard license we have on the feeder.

Q. Well, it is a fact, is it not, that your company, Government Exhibit 569, this general license agreement, has a favored nation clause in Paragraph 1 (B)?

A. I would have to look at that to see.

Q. Paragraph 1 (B), beginning at the bottom of Page 2, and going over to the top of Page 3.

A. My understanding is that we pay exactly the same rates of royalty that everybody does.

Q. Well, my question is whether or not it is a fact that your company has a favored nation clause, reading as follows—Government Exhibit 569, at the bottom of Page 2 and ending at the top of Page 3:

"Hartford's Lowest Rate. This shall mean the lowest rate of royalty for any given ware (whatever form such royalty may take) which shall at the given time be charged by Hartford to any licensee in the United States for the [fol. 11408] production of the same class of ware by the same type of machine and/or process."

Now, I ask you whether you have that provision in your license agreement?

A. Yes, that is a standard provision in our licenses. We must have it in our license agreement.

Q. Well, that is your license agreement, isn't it?

A. I was looking for the signature; I wasn't sure.

Q. You say that is in every license agreement that Hartford issues?

A. Well, I haven't seen every license that Hartford has issued, and so I couldn't say that.

Mr. Isseks: Your Honor, as far as I know, I think there are only two or three of the Hartford license agreements that have any provisions like that, and if I am wrong, I am subject to correction. One is Capstan, and there is a dispute about it, and I think there is one other, Ball Brothers—no one else. Your Honor will recall the testimony given less than two weeks ago that they refused to put that in writing for Brockway, said it was not their policy to put that in it, after the few they had given.

Q. Now, your company had an invention license, did it not, in its basic agreement between Hartford and Owens in 1935, Paragraph or Section 2—an invention license on the Hartford patents to Owens?

A. As I read this, this is a license to use machinery.

Q. Well, maybe I better read it out loud:

"Hartford grants to Owens a non-exclusive, non-assignable (except to the successors to its entire glass container [fol. 11409] manufacturing business), and non-divisible (except to its subsidiaries) license to make, or have made for it, and to use, machines and/or methods embodying licensed inventions of Hartford for the manufacture of glassware, subject, however, to"——

certain exclusions. You have that provision in your license agreement, have you not?

A. Yes. I think the point I wanted to make is that there *is that there* is no point whatever in a license, as I see it, to inventions, unless they are embodied in a machine. You can't use a patented invention—the big thing that you get is a machine that you can use.

Q. Do you know of any other licensee of Hartford other than Owens and Hazel-Atlas, that has licensed inventions—a licensed invention from the Hartford-Empire Company, of a license to make in connection with what this invention is, rather than a specific license of a particular piece of equipment?

A. Well, except as I have stated, I understood that all pay the same rates under licenses. The wording may have differed, but the substance of it was that all got Hartford machines and feeders and instructions in how to use them as shown by the Hartford patents.

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[fol. 11410] Q. Perhaps I better ask you another question. Has Owens manufactured milk bottles since 1935 on Hartford equipment?

A. Yes, sir, we have.

Q. So you were not restricted, so far as you know?

A. Well, there seems to be some restriction in this license which I was just studying. As a matter of fact, we have Hartford equipment in our plant, and have operated it, but I see that there are certain restrictions on the operation of the Tucker & Reeves type of feeder.

Q. That is right—in connection with the paddle feeder and paddle needle feeder?

A. I haven't read it through to ascertain if that is correct, but if you want me to answer as to whether there were any restrictions on our manufacture of milk bottles by Hartford equipment, I can probably get it by reading this through.

Q. Have you manufactured milk bottles?

A. We have.

Q. Do you know whether, some time prior to 1941, certain [fol. 11411] Hartford licensees were precluded from making milk bottles on Hartford equipment? Was that brought to your attention?

A. I don't recall that it was.

Q. It was never brought to your attention—never heard of it?

A. Well, I knew that certain licensees had milk bottle rights and certain other licensees had other rights.

Q. Now, was your company under any restriction in making bottles—I mean ordinary beer bottles or prescription bottles or soda bottles, in connection with the use of Hartford equipment?

A. There are a number of restrictions on our use of Hartford equipment of the Tucker & Reeves type.

Q. Did you manufacture beer bottles on any Hartford equipment since 1935?

A. I wouldn't know that. I don't know of any. The normal way to make a beer bottle would be on the Owens suction machine.

Q. Did you make any prescription bottles in connection with Hartford equipment since 1935?

A. I couldn't answer that. I might point out that the Owens suction machine we consider preeminent for the manufacture of narrow neck ware, and our use of the Hartford machine is very largely in the field of wide mouth ware. Now, whether we did here and there make some narrow neck ware on the Hartford machine is a question I cannot answer off hand.

Q. Did you make anything since 1935 on Hartford equipment?

A. Yes, sir, we did.

Q. And what kind of bottles have you made with Hartford equipment since 1935?

A. We have used it principally in the making of wide-mouth ware.

[fol. 11412] Q. What are those—what do they consist of? Let's take one of these photographs.

A. That would be mayonnaise jars or a chili sauce bottle or a fruit jar.

Q. Well, we have a lot of bottles in this exhibit. One of them here is, you have coffee jars—did you make them on Hartford equipment?

A. Yes, sir.

Q. And did you make this Presto jar on Hartford equipment?

A. Yes, sir.

Q. And did you make tobacco jars on Hartford equipment?

A. Yes, sir.

Q. Milk bottles?

A. Yes.

Q. And all these various food bottles of various kinds—vinegar bottles——

A. Well, vinegar would be an Owens item. That is the narrow-neck type. Catsup was the main bottle made on the Owens machine.

Q. What about these salad?

A. Salad dressing bottles might be made on either machine.

Q. Have you had any restrictions in your production, with regard to the quantity? Your former contract, Government Exhibit 569, states the quantity of bottles you could make?

A. No, we have had no restrictions of that kind.

Q. Now, in connection with the 1935, there was another contract entered into, was there not, Government's Exhibit 568, a general license from Owens-Illinois Glass Company [fol. 11413] and Owens-Illinois Pacific Coast Company to the Hartford-Empire Company?

A. Yes, sir.

Q. And under that contract your company received two and a half million dollars?

A. I would like to look at that to see.

Q. Don't you remember that?

The Court: What is the date of that?

Mr. Isseks: I think that is October 30th, Your Honor.

The Witness: No, September 30, 1935.

Q. And that agreement was executed simultaneously with the other license agreement from Hartford to Owens, was it not?

A. Well, this agreement is dated September 30, 1935, and the other agreement which you handed me a moment ago, is dated October 1, 1935.

Q. One day's difference?

A. That is correct.

Q. And under the Government Exhibit 568, Owens received two and a half million dollars, did it not?

A. We did receive two and a half million dollars from Hartford-Empire Company in connection with the termination of our license arrangement with them in 1935. Now, if you want to know whether it is under this agreement, I will have to read it through.

Q. There was a time when you ceased getting any divisible income; is that right?

A. Yes.

Q. Now, your Owens Pacific Coast subsidiary manufac- [fol. 11414] tures really all types of equipment, does it not?

A. Equipment or bottles?

Q. Bottles.

A. Yes, we do.

Q. Narrow neck and wide-mouth?

A. Yes, sir.

Q. What kind of machinery do they use—Owens suction or Hartford feeders?

A. They use Hartford feeders.

Q. No Owens suction?

A. No Owens suction.

Q. They make narrow neck bottles on Hartford feeders, too?

A. That is true.

Q. Do you have any restriction as to production of bottles they can make, the quantity, so far as you know?

A. So far as I know there is no restriction on the quantity. They probably have the same restrictions in their license that we have in our license on the types of bottles that they can make.

Q. What is the fact as to the Hartford single feeder, do they have any restrictions as far as you know?

A. I am not quite clear as to their situation as regards fruit jars. But I know that they are restricted in that whole list of restrictions that appears in that license; that is, they have the same restrictions in their use of the Hartford single feeder, or substantially the same restrictions, that the parent company has in its use of the Hartford single feeder.

* * * * * * *

[fol. 11415] Q. Did your company sign a new agreement in February, 1941, with regard to eliminating any restrictions that existed in this 1935 contract?

A. Yes, I think we did.

Q. And all restrictions were then cancelled?

A. That is a pretty broad statement. I think so. I am not too familiar with that agreement.

Mr. Isseks: I don't know whether that contract has ever been put in evidence, Your Honor. I think it has, but I am not sure, and if it hasn't been put in evidence, I would like to have it put in, because, as Your Honor will recall, Mr. Wall put in at one time all the additional agreements executed in 1941.

The Court: You may check on that and find out whether it is or not.

Mr. Isseks: No more questions.

Redirect examination.

By Mr. Middleton:

Q. Just one more question, Your Honor. Mr. McNerney, [fol. 11416] this morning I asked you for the date of the debentures that you said were issued in the amount of some $15,000,000, I think, to help in paying for the cost of the rehabilitation program. Now, were you sure of the date of those debentures?

A. No; this morning in my testimony I misstated the date. I said it was August 1, 1939, in error. I should have said August 1, 1937.

Q. You wish to correct your testimony to that extent?

A. I wish to correct my testimony to that extent, yes.

Q. The correct date was 1937 then, instead of 1939?

A. Yes.

Mr. Middleton: That is all, Your Honor.

The Court: Call your next witness.

Thereupon the Defendant Owens-Illinois Glass Company, further to maintain the issues on its part, called as a witness in its behalf,

Frank T. Nesbitt, who, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Williams:

Q. Will you tell us your name, please?

A. Frank T. Nesbitt.

Q. Where do you live, Mr. Nesbitt?

A. Toledo.

Q. What position do you have with the Owens-Illinois Can Company?

A. I am Vice-President and General Manager of the Owens-Illinois Can Company.

Q. That is a wholly-owned subsidiary of the Owens-Illinois Company?

A. Yes, sir.

[fol. 11417] Q. What position do you have with the parent company, the Owens-Illinois?

A. Vice-president.

Q. When did you first enter the glass business, Mr. Nesbitt?

A. In 1916.

Q. And with whom and where?

A. The Illinois Glass Company in Gas City, Indiana.

Q. And that was in 1916. How long were you there at that period?

A. About three years.

Q. Well, at the period of 1916——

A. No, I beg your pardon. I was there only a year before going away to school.

Q. And where did you go to college?

A. Purdue University.

Q. And what degree did you get at Purdue?

A. I got an Electrical Engineering Bachelor's Degree.

Q. And after graduating in 1921, where did you then work?

A. Back at Gas City, Indiana, for the Illinois Glass Company.

Q. And in what capacity?

A. I was assistant plant engineer.

Q. And what was your next position?

A. Plant engineer at that same plant.

Q. And what were your duties as plant engineer at that time?

A. I was in charge of all construction and maintenance of lehrs and machinery and buildings, furnaces.

Q. And what was the next step in your employment with Illinois Glass?

A. I went with the General Engineering Department of [fol. 11418] the Illinois Glass Company in Alton, Illinois, on the engineering staff.

Q. And what particular branch of the engineering did you have then in your work?

A. I had the power—electric power and power system engineering.

Q. Now, what change did you make in 1929, on the merger of Illinois and Owens?

A. I became plant manager at the Gas City, Indiana, plant.

Q. And what were your duties there as plant manager?

A. Well, we had the charge of the operation of the plant so far as concerns the making and shipment of bottles.

Q. And of all of the facilities and people around the plant?

A. That is right.

Q. Now, how long did you remain in that position?

A. Until 1932.

Q. And what position did you then have?

A. I went back to Alton, Illinois, where the general engineering department of Owens-Illinois Glass Company was located, as chief engineer.

Q. And what were your duties then as chief engineer of the company?

A. We developed all the projects for the several factories that had to do with the technique of all operations.

Q. And what position then was the next one you occupied?

A. General factories manager.

Q. And then you moved to the office here in Toledo?

A. Moved to Toledo.

Q. And in 1935 was that, you say?

A. That was in 1935.

[fol. 11419] Q. And describe your duties as general factories manager—what was your jurisdiction and duty there?

A. Well, the correlation of the work between all factories and general engineering department.

Q. And you remained in charge of that department until when?

A. 1939.

Q. That is when you were elected vice-president and general manager of the Owens-Illinois Can Company?

A. Yes.

Q. Now, going back to your first connection or knowledge of lehrs used in the glass plant—when was that?

A. That went back to 1916.

Q. What sort of lehrs were they using in the Gas City plant of Illinois Glass Company in 1916?

A. They were using a hand-operated machine which consisted of pans which were hooked together and pulled through the lehr manually. When one pan was emptied on the back end of the lehr it was wheeled around the front end and made a part of the lehr conveyor again.

Q. When you went back then, after you left there in 1916 and went to college, and came back in 1921, what sort of lehrs were they using at the Gas City plant at that time?

A. Well, some of the same, but a few had been added of the—what we call pan type lehrs, the difference being that

they were automatically moved and consisted of channel shaped pans which were bolted on to an endless chain on each end of the pan and driven by motor power through the lehr.

Q. And when that passed through the lehr——

A. We had a return strand.

[fol. 11420] Q. Now, what was the first electric lehr put in in the Illinois Glass Company plant, and who put them there?

A. Two lehrs were put in the Alton plant for the annealing of five gallon water bottles. I think the year was 1924. Those were lehrs designed by the Illinois Pacific Glass Company, who had had them in rather general use in their plant on the Coast, and they were designed by Mr. Henry.

Q. And how did that electric lehr differ from the lehr that you had been using heated with gas—other than the fuel, what difference was there between them?

A. Well, they were quite similar except that they were heated with electricity. Of course, heating them by that means permitted a good many simplifications in the design, in that a large amount of fire brick which was used in the oil or gas fired lehrs of that type could be eliminated, and it was unnecessary to have a stack on the lehr because there were no fumes or products of combustion, and the lehr, of course, was capable of a sectional control of temperature, very accurately, unlike the old oil and gas fired lehrs.

[fol. 11421] Q. Now, in 1925, what commission did you get from Illinois Glass Company, that is, what work were you to do with respect to lehrs?

A. We started at that time with a design of lehrs suitable for the regular Owens machine. Unlike the 5-gallon water bottle machine, it had a very special annealing problem and there was only one special machine. We had a large number of Owens machines, for which we needed a new and more modern lehr.

Q. I take it you mean that it required a different sort of lehr, the ordinary Owens machine differed from that required by the feeder-fed machine?

A. Yes. Very different.

Q. Now, in what respects were the pan lehrs you had been using, insufficient, and what improvements or what results you wanted to obtain that they didn't give you?

A. Well, we wanted to obtain a lehr which would give us a better grade of annealing comparable with the electri-

cally-heated lehrs that we put in on 5-gallon water bottles. We wanted to get greater economy of fuel. We needed a lehr that was movable to and from the machine. We needed a lehr which——

Q. Let's stop there just a moment. To or from the machine: what was the purpose of that innovation?

A. Well, it is characteristic of the Owens machine that we make a wide range of ware. We have machines with which we make anything from one-half ounce to quarts. The actual limit of the machine is gallons. But oftentimes [fol. 11422] the range on the single machine will be low as half ounce, up to quarts, and the handling conditions and annealing conditions are quite different on that wide range of ware, particularly that which has to do with the handling of the bottle before it gets into the lehr. In the lehr that is stationary we could not get the flexibility in the handling equipment that we felt we had to have, particularly in connection with the time the ware was out between the machine and the lehr.

Q. How about the number of lehrs of the old type which it took to serve an ordinary 10- or 15-arm Owens machine?

A. There were many types that took two, occasionally a job that took three lehrs.

Q. You wanted to produce one that would serve one machine by itself?

A. Under all conditions.

Q. Now what about the cost?

A. We wanted to get a lehr with as low cost as possible, rather, not necessarily a lehr—per lehr—but the cost for annealing equipment for a given machine. That is to say, two or three lehrs to an Owens machine of the old type were very costly, whereas one electric lehr might cost more than a single one but would not cost more than two or three.

Q. Now, what was your problem with respect to loading the lehr, that is, getting the ware from the forming machine into the lehr?

A. We never had loaded the old pan lehr any other way than by hand, which required one boy to set the ware up [fol. 11423] and another boy to carry the ware in. We felt that the lehr was entirely unsuitable to be adapted to automatic loading and handling.

Q. What was the condition of the old lehrs with respect to the inspection and packing at the cold end of the lehr?

A. On the large production machine we had a very un-

desirable condition for packing, in that ware could only be packed from the end of the lehr. Even though they were wider than the lehr we designed, they still did not present near as much space from which to work.

Q. What did you do then with respect to the new lehr; what were the features that accomplished these various results that you have spoken about?

A. Well, we adopted a wire-mesh conveyor, a sectionally controlled heat. We mounted that lehr on wheels so it was movable mechanically, and by electric power. We designed the cold end of the lehr so we could have packers on both sides and we heavily insulated the lehr for the fuel economy. We were able to eliminate all the stacks and outside connections. Those, I think, were the principal features that gave us the results we were after.

Q. What do you mean by "stacks" or "outside connections"?

A. Well, you see the old gas or oil fired lehr had to have stacks opening out to the outside. Otherwise the smoke and fumes of the oil burning would be in the factory. With those stacks you would have been prevented from making the lehr movable, even though the other features [fol. 11424] might have remained the same.

Q. In the ordinary lehrs, do gases from the burning of the oil or gas—did they enter into the same chamber or part of the lehr where the bottles were, or into a different part?

A. They were the muffled type lehrs that we used and the gas is excluded from the ware chamber.

Q. Will you describe briefly overall, the lehr as it was constructed, its length, its sections, different kinds of sections, its width and this so-called wire mesh belt, so the Court will have a notion of what it looked like, distinguished from the old brick lehrs with the pan type carriers?

A. Well, it was a large lehr. The old lehrs ran 60 to 70 feet in length, and the lehr we built was about 90 to 125 feet in length. If was built 4 to 6 feet wide and, as I said, mounted on wheels with heavily insulated sections 5 feet in length which could readily be removed or additional sections put in. And the front of the lehr was a very different construction, with a platform extending out and in front of the door, to accommodate automatic loading. The old lehr required a heavy concrete foundation and was of very heavy structure, necessarily, made of firebrick material,

as against the electric lehr, which was built mostly of insulating materials, very light materials which facilitated the mounting of it on wheels, which in turn facilitated moving it. It was very completely different in appearance and [fol. 11425] in temperature control and every significant feature.

Q. Now, taking the lehrs built up in these 5-foot sections, you say some were heavily insulated and some less, will you describe the location of these various types of sections in the lehr and what functions were performed by them?

A. Those lehrs were built up of three different types of sections. The front end of the lehr was of heavily insulated sections which extended throughout the annealing zone. Behind them were sections, in which the amount of insulation was tapered off; and behind them were the open sections where the ware went out into the open from the tunnel.

Q. Now during the course of constructing these lehrs, you made some inventions, did you not?

A. Yes.

Q. And made application for United States Patents for those inventions?

A. Yes.

Q. I show you printed copy of United States Patent No. 1,923,581 and marked for identification as Exhibit in this case as 6037. Is that one of the patents you got on the applications you filed?

A. Yes, it is.

Q. I hand you United States Patent No. 1,904,983, marked in this case as 6038, and ask you if that is the other patent you received on that.

A. Yes, sir.

Mr. Williams: I am sorry, Your Honor, we have only these two.

[fol. 11426] Mr. Isseks: Have you marked them?

Mr. Williams: They are marked.

Mr. Isseks: What are the marks?

Mr. Williams: O-6037 and O-6038.

Mr. Isseks: Your Honor, if they are not admitted on any issue of prior art, validity or infringement, we do not make any objection.

Mr. Williams: I am offering them generally. I am simply going to show, however, that there was an interference declared with respect to one of the applications to this and

that the interference was settled. I don't intend to go into the value or how these claims interfered.

Mr. Isseks: I assume Your Honor is going to follow his prior ruling as going simply to the state of mind of the Owens-Illinois Glass Company?

Mr. Williams: I am making no issue of that at this time.

The Court: Very well. They may be admitted.

Q. When your applications were filed, they got into interference, did they not?

A. Yes.

Q. Do you remember with what inventors they were put into interference?

A. I am not sure. I was not closely associated with that. My work was confined to operation. I believe Mulholland and Amsler.

Q. Mulholland a Hartford engineer, and Amsler was a Simplex engineer?

A. I don't know that.

[fol. 11427] Q. Who handled these patents for you in making application?

A. While I was working with the Illinois Glass Company before the merger, I worked with a patent attorney in St. Louis by the name of Haynes. Following the merger I had nothing to do with the matter except to know about it in general.

Q. You know settlements were made of the controversies in the Patent Office in the interference?

A. I understood so.

Mr. Isseks: If there is any contracts, we would like to have them.

Mr. Williams: I am about to offer them. You have a set.

Mr. Isseks: Nothing besides these?

Mr. Williams: No. I have had marked for identification here——

Mr. Isseks: No objection on any of these.

Mr. Williams: May I describe them, very briefly, to the Court, without reading them?

Mr. Isseks: Give us the exhibit numbers for each one of them.

Mr. Williams: Yes. That is what I have before me, together with two which I think were the last put in by the government sometime ago.

The first is Exhibit O-6039, which is a general lehr agreement between Illinois Glass Company and Hartford-Empire Company dated December 1, 1925. It is simply the standard agreement of Hartford granting to Illinois Glass Company the right to get as many lehrs made by Hartford on [fol. 11428] license and lease for a stipulated license fee and royalties as it might require or desire. There was no license back from Illinois to Hartford.

The second is general lehr agreement between Hartford-Empire Company and the Owens Bottle Company, dated January 22nd, 1926, Exhibit O-6040. This is the same sort of agreement as the one I just described except it was made in favor of the Owens Bottle Company.

Exhibit O-6041 is a supplemental agreement between Hartford and the Owens Bottle Company. It simply——

Mr. Isseks: What is the date?

Mr. Williams: March 21, 1927. That simply changed the royalties and the method of paying the royalties.

The next is O-6042, supplementary agreement with Illinois Glass Company dated July 20, 1927, amending the prior agreement with Illinois Glass, and here again simply changing or reducing the royalty.

The next agreement is O-6043, dated June 12, 1930, between Hartford-Empire and Owens-Illinois Glass Company. This was the first agreement made in settlement of the Interference which the witness testified that his application got into with Mulholland and Amsler, and if I may summarize the recitals and provisions we need not read the whole thing.

There are four claims set up in interference describing what the witness described as a wire mesh belt upon which the ware was carried, the mechanism for carrying it through the lehr, methods of heating the lehr, and some of the methods referred to were by electricity. The placing of the [fol. 11429] electric heating units with respect to the mesh and with respect to the various sections so those various features constituted the claims of the application for patent made by the three men. Mulholland added some twelve claims which were really different ways of stating the four claims, and finally in the fight that went on Mulholland was held not able to make the claim, and it was therefore left between Nesbitt and Amsler, and in order to settle the matter and to compromise the fight and let the Patent Office decide, Hartford entered into this agreement with Owens-

Illinois granting it a license only under the claims,—such of the four claims that might be awarded to Mulholland. Then came the next agreement shown in 6044, supplemental agreement between Hartford-Empire and Owens-Illinois Glass Company in the interference dated November 12, 1930, and that recites that Hartford has an exclusive license from Amsler on the claims that Amsler had in the interference, and Hartford as the holder of that Amsler license, Mulholland having been put out of the fight, agreed with Owens-Illinois that in case any interference claim is awarded to Amsler then Hartford would grant to Owens a non-exclusive, non-divisible license to make and use only in its own factories and any of its subsidiaries lehrs involving inventions set up in these claims in interference.

The next is agreement marked O-6045, dated February 18, 1931, special lehr agreement between Hartford-Empire and Owens-Illinois Glass. I think, however, I will ask the witness a few questions about what went on to explain in some measure what that agreement was about and what it [fol. 11430] meant, and what the controversy was itself.

Q. Now, Mr. Nesbitt, I understand from your testimony that the heating unit in the lehr covered by your patent and developed by you, the heating was done entirely by electricity; is that not so?

A. Yes.

Q. Now, when those lehrs went out into use in the factories, do you know what was the practice or what was occasionally done by the local man to get heat at the front end of his lehr, where there had been a stop or a cessation of bottles coming through,—do you know what he did there?

A. I think in any case, regardless of the size of ware or interruption to loading, that the electric heating was quite sufficient. There were occasions where, because of cold air and factory drafts, and the like, that some outside heating means was applied in the form of open gas flames playing on the belt before it entered the lehr. Those were temporary connections and for the most part were made on emergency conditions and had nothing to do with the design of the lehrs proper.

Q. But none of those lehrs were designed by you as gas heated or oil heated or oil fired lehrs?

A. Not originally.

Q. Now, do you know whether Owens-Illinois then got into a controversy with Hartford about the use of these electric lehrs with some gas?

A. I understood so, and my understanding came only from the word we had in the engineering, that where we [fol. 11431] substituted gas elements for electric elements completely, and in that changed the design and the drawings, that we would be required to pay Hartford royalties; but that was unlike the heating on the outside to warm up the belt.

Q. Beg pardon?

A. That was a different matter than heating on the outside merely to warm up the belt.

Q. But there were, in some cases, gas pipes stuck in beside the electric element for temporary heating?

A. Yes, that was sometimes true.

Mr. Williams: This agreement, Your Honor, O-6045, special lehr agreement between Hartford-Empire and Owens-Illinois Glass Company, dated February 18, 1931, made settlement of that controversy.

By this agreement, called the Special Lehr Agreement, first, it was provided that nothing in the agreement should alter or affect the contracts before recited with Illinois Glass Company and Owens Bottle, of December 1, 1925, and January 2, 1926; and also a single license and lease for a lehr having been made by Hartford previously with the Berney-Bond Glass Company which Owens acquired. Hartford then gave Owens a release under its patent for the use of electric lehrs, recognizing Owens' pioneering in that field, and granted it the right to use oil and gas fired lehrs under patents of Hartford, at Hartford's regular rate, but provided that the lehrs at the time in the possession of Owens and previously built by it, should remain [fol. 11432] free of royalty. Now, that went on for sometime. At the same time the second, or supplementary agreement of the same date, February 18, 1931, Exhibit O-6046, was made with respect to five Dixon machines which were in the plant at Breckenridge, which had been owned by Atlantic Bottle Company, and it is agreed there that if and when Hartford should make good its patents against Dixon lehrs or lehrs of that type, against others, then Owens would pay royalties with respect to those five lehrs, and not until then.

Q. About how many of those electric lehrs had you built, Mr. Nesbitt, before you ceased your connection with the glass side of the business?

A. I am not sure how many of them had been set aside. I would only be able to answer roughly in connection with the number in use. There were some that were abandoned because of the capacity having outgrown them. I should say the number operating then was around 175.

Q. Of the electric lehrs?

A. Yes.

Q. And you also had some gas-fired lehrs?

A. Well, I would include those. I thought of lehrs in terms of the lehrs built over those drawings, and they had both gas elements and electric elements, as we built them.

Q. You are not distinguishing, at this point, between the electric lehrs used as electric lehrs and those used as gas lehrs?

A. No.

[fol. 11433] Q. Now, these lehrs being sectional lehrs, when you took down a lehr or quit using it with a given machine, what did you do with it in the factory?

A. Well, we stored all or part of it, depending on whether or not the new position in which the lehr was to go required a shorter length, or it might be transferred to a factory where the lay-out didn't provide for a lehr of that length, and the parts in that respect, or sections, were all interchangeable.

Q. And if a number of sections were in storage, then a lehr could be selected or made from various of these sections, without reference to where they had been used before?

A. True.

Q. And you could use them on an existing lehr to lengthen it, or take out a section to shorten it?

A. Yes.

Q. So then a controversy might easily arise, on shifting units of that lehr, as to the identity of the lehr; that is, as to whether it was the lehr that was built and in position prior to the date specified in the license, October 1, 1931?

A. It could.

Q. So that it might have one or more sections than it originally started out with, if you kept track of some one section as the identifying unit?

A. True.

Mr. Williams: The final one I have here is O-6047, dated [fol. 11434] February 6, 1935, between Hartford-Empire and Owens-Illinois. That agreement was simply a royalty—reduction in the minimum royalty—and as I understand it, was simply in line with the rights granted to all other lehrs.

Mr. Isseks: No objection to any of these.

The Court: Exhibits O-6039 to O-6047 may be admitted.

Mr. Williams: Your Honor, Exhibit 580 is the Consolidated Lehr Agreement. The next in order of time, although it was put in long ago by the government—that is the consolidated lehr agreement between Hartford-Empire and Owens-Illinois, made October 1, 1935. You will remember, in that series of 1935 agreements, the first agreement executed September 30, 1935, cancelled all license agreements, patent license agreements, between the two companies, and therefore it was necessary to restate the rights of the parties with respect to lehrs. And you will find by comparison of them that this consolidated lehr agreement re-states the rights of the parties substantially as they were under the 1931 agreement. That is, that Owens-Illinois was cleared as to its electric lehrs from patent claim by Hartford, and on the gas and oil fired lehrs, only as to those which it had built and had in use October 1, 1935. On all other lehrs coming within the orbit of any Hartford patent, Owens would have to pay the same royalty that anyone else paid. [fol. 11435] Now, out of the interchaneability of these sections and the more or less temporary use of the gas arose a controversy between Owens and Hartford on two bases: first, when did the electric lehr cease to be an electric lehr by reason of the use of gas, whether more or less temporary,—there being a substantial dispute between the parties on the subject? And, second, when did it cease, if at all, to be a lehr owned and in possession prior to October 1, 1935? If it had eight or ten sections, and as long as those ten sections were always used together, there wasn't any question of its identity, but in shifting back and forth from furnace to furnace and from machine to machine, and in the storage room, and in lengthening or shortening with other lehrs, and without a very close record being kept of the original use of each section, you can see that very easily the question of identity arose, and some 20 or 30 lehrs were involved in that dispute as to identity, and something like, I think, the same number involved in the dispute as to when

the lehr ceased to become an electric lehr and free of patent claims on the part of Hartford, and if so, how much. And that controversy was the last controversy that arose with respect to these lehrs, and was settled by the agreement of October 25, 1939, Exhibit 1685, and that set up and described the number, re-described the number of lehrs of each kind that were out. This witness cannot tell, as he has been out of the glass business since April, 1939, but I can call some other witness who can tell the number of lehrs of vari- [fol. 11436] ous types now in use.

Mr. Isseks: Have you the figures here?

Mr. Williams: Yes, roughly.

Mr. Isseks: Just state them.

Mr. Williams: Roughly, there are 21 Hartford lehrs; oil and gas fired, rebuilt from electric lehrs, subject to royalty, 49; Amsler-Morton and Simplex lehrs subject to royalty, 13; Owens-Illinois gas and oil fired lehrs owned prior to October 1, 1935, not subject to royalty, 23; electric lehrs, 102.

Mr. Isseks: We stipulate that.

Mr. Williams: There are also spare sections and spare parts in storage from which supplemental parts can be made and lehrs lengthened and shortened.

Mr. Isseks: We stipulate that, too, Your Honor.

Q. Mr. Nesbitt, so far as you know in your connection with the engineering department of the Illinois Glass Company and with the Owens-Illinois up until April, 1939, had either Illinois Glass or Owens-Illinois Glass, during the period you were with the latter, made lehrs or furnished lehrs to anyone other than to their own factories or the factories of their subsidiaries?

A. Not to my knowledge.

Q. Where were your lehrs built?

A. Part of the equipment was purchased, most of the lehrs were built in our own shop, operating in conjunction with the general engineering department at Alton.

[fols. 11437-11438] Q. That is, you mean equipment like motors?

A. Insulating materials, pyrometers, control instruments—those were standard purchased equipment, but the driving machinery and conveyor machinery, aside from the belt, was all built in our own shops.

Q. Now, some reference has been made to a loader. To what did you apply that term, what mechanism in connection with the glass industry did you apply the term "loader"?

A. Well, as it was used in connection with these lehrs originated by our own engineers, there were two loaders: one was the device which loaded ware to a complete width of one of these lehrs; and the other was what we called the dual lehr, loading the ware from two machines into one lehr. Those were the only two loaders used with this lehr.

Q. And these loaders performed the same function that Hartford stackers performed, did they?

A. Yes.

Q. That is, to get the ware from the conveyor into the lehr?

A. Into the lehr.

Q. In proper order?

A. Yes.

* * * * * * *

[fol. 11439] R. D. Brown, being recalled, further testified as follows:

Direct examination.

By Mr. Wall:

Q. Mr. Brown, did you visit Mr. Werbe, of the Lynch Company, sometime in the spring of 1933?

A. Yes, I did.

Q. Did you make a memorandum of that meeting?

A. Not immediately. The only thing I have been able to find that might be regarded as a memorandum of that meeting is in a later paper which is already in evidence in this case.

Q. Exhibit 309?

A. As Exhibit 309; in which I make reference to that meeting.

Q. On the fourth and fifth pages, I believe. Now, did you find memorandum of another meeting which was mentioned by Mr. Isseks, of July 8, 1933?

A. Yes, I found a memorandum dated July 10th of a [fol. 11440] meeting on July 8, 1933.

Q. Other than those two memoranda which you have mentioned, have you found any memorandum corresponding to the requests made by Mr. Isseks at pages 9719 to 9722 of the record?

A. No, there are no others.

Q. Now, as to the visit to Mr. Werbe's office in the spring of 1933, when was that, what date, as near as you can recall?

A. As near as I can recall it was the 17th of March, and the occasion was to discuss with Mr. Werbe, in person, the question that had been up already for some time as to the claims of infringement being made by the Lynch Company against us and by us against the Lynch Company.

Q. Upon what patents?

A. There were two patents owned by the Lynch Company and there were five, I think, owned by us, the inventors being Lorenz, Ingle, Sears and Steimer.

Q. Well, what I mean really was whether they were patents owned by Lynch and by Hartford, respectively.

A. Oh, yes.

Q. And applications owned by Hartford, possibly?

A. Yes, that is so.

Q. How about Headley & Thompson?

A. And Headley & Thompson was very much in question then, but we as yet had no rights except option rights under those applications; we were, of course, making up our minds as to what we wanted to do under that option.

Q. Did that have anything to do with your seeing Mr. Werbe at that time?

A. Oh, yes.

[fol. 11441] Q. In what respect?

A. As I said, we had been claiming that the Lynch Company infringed some of the patents we then owned, and it was our belief they would also infringe the Headley & Thompson patents when issued, and my object was to see if an arrangement could be made to settle all of the controversies, including the Headley & Thompson matter, and to see if I could make an arrangement by which we could make some money out of the license rights if Lynch would take them.

Q. License rights under what?

A. Under the patents that we owned, and also under Headley & Thompson, if we should acquire Headley & Thompson.

Q. Now, do you have before you a copy of Exhibit 309?

A. No, I believe not.

Q. I show you Exhibit 309, which is the memorandum of April 29, 1933, and call your attention to the part having the heading, on page 4, "Proposed License Arrangement with Lynch Corporation". Please just look at that so you know what it is.

A. Yes, I know what it is.

Q. My question is whether that relates to the meeting with Mr. Werbe that you refer to?

A. Yes, it does, and this part is what I referred to as the nearest thing to a memorandum of that meeting that I could find.

Q. Do you have any recollection of the discussion had with with Mr. Werbe other than shown in this Exhibit 309?

A. I cannot add anything to the memorandum, but I do [fol. 11442] have independent recollection of the matter of the license fees. Our suggestion was that Lynch pay us $2,000 and his counter suggestion was that $1,000 would be better.

Q. Did you see Mr. Werbe later that spring of 1933?

A. No, I don't think I saw Mr. Werbe at all during the balance of 1933.

Q. There is in evidence a memorandum of June 22, 1933, signed by yourself, to Mr. F. Goodwin Smith, which is Exhibit 312. I think you probably have identified that, if not there is no question that is your memorandum?

A. Oh, yes, that is my memorandum.

Q. Up to the time of writing that memorandum, had there been any further meetings between you and the Lynch representatives, any of them?

A. No, there had not.

Mr. Wall: I call attention of the Court and of counsel to the fact that Exhibits 1020, 1021 and 1022, as I see it, relate to the visit of Mr. Brown to Mr. Werbe in March. They precede the visit but I think they lead up to it. Exhibit 1025 intervenes. In April Mr. Brown writes to Werbe regarding an appointment. Exhibit 316 is a telegram of Hartford-Empire to Bridges, in regard to a possible appointment between Lynch representatives and Eldred and Brown, in Pittsburgh on July 8, 1933.

Q. Do you recall such an incident, sending such a telegram?

A. I don't recall the telegram; I do recall the meeting.

Q. There was a meeting, was there, on July 8th?

[fol. 11443] A. Yes, there was.

Q. Who were there?

A. Mr. Bridges, of the Lynch Company, and Mr. McMurtrie, also representing the Lynch Company, as I understood it, and for Hartford, Mr. Eldred and I.

Q. What was the occasion for that meeting?

A. That was another meeting to discuss a possible license arrangement between the Lynch and Hartford Companies.

Q. License in regard to what?

A. In regard to the patents which each owned, particularly the ones which each had been charging the other with infringing. And from our point of view the Headley & Thompson matter was also involved, because we were still, of course, deciding what to do about that.

Q. And had there been a change in the Headley & Thompson situation by July?

A. Oh, yes, in June the Board of Appeals of the Patent Office had decided in favor of Headley & Thompson the interference between Headley & Thompson and Lynch.

Q. That is the matter which we referred to previously in the testimony, is it not?

A. Yes, I believe so.

Q. Now, do you have any recollection, independently of the memorandum, of the meeting of July 8, 1933?

A. Not too much. I remember where it was and the sort of room it was in, those who were there; and the thing that I remember independently of my memorandum most clearly is that there was a great deal of discussion as to whether [fol. 11444] Hartford was willing to have Lynch manufacture machines for it.

Q. Is that all your independent recollection?

A. That is all my independent recollection, yes.

Mr. Wall: I have had marked as Exhibit H-6048, Your Honor, and I offer in evidence and desire to read a memorandum of July 10, 1933, signed by Brown, to Mr. F. Goodwin Smith, re conference with Lynch representatives.

Mr. Isseks: No objection, Your Honor.

The Court: It may be admitted.

(Exhibit H-6048 read by Mr. Cole.)

[fol. 11445] Mr. Wall: If Your Honor please, on Page 2 there is a longhand note, which I will have explained by the witness and will offer in a moment or two.

Q. Mr. Brown, was that view of the patent situation expressed by Mr. McMurtrie also your view as to the comparative strength of your position?

A. By no means.

The Court: You may suspend at that point.

(Recess ten minutes.)

Q. Mr. Brown, the last sentence of Exhibit H-6048 is this:

"Attached is copy of wire sent Bridges after Smith talked with Mr. Levis".

Have you before you a copy of a telegram of July 10th from yourself to Mr. E. G. Bridges?

A. Yes. I have.

Mr. Wall: That I had marked H-6049, and I now offer it.

Mr. Isseks: No objection.

The Court: It may be admitted.

(Exhibit H-6049 is read by Mr. Wall.)

Q. And you sent that telegram, did you, Colonel?

A. Yes. I did.

Q. There is a reference in Exhibit H-6048 to the Root machine and to your intention to make inquiry of Mr. C. B. Belknap. Did you do that?

A. Yes.

Q. Have you before you a copy of a letter from yourself to Mr. C. B. Belknap dated July 10, 1933?

A. No, I don't seem to have that.

[fol. 11446] Q. I will show you this copy which I have marked H-6050; that is the one?

A. Yes.

Mr. Isseks: There is no objection.

Mr. Wall: This, Your Honor, is offered.

Mr. Isseks: No objection.

The Court: It may be admitted.

(Exhibit H-6050 is read by Mr. Wall.)

Q. Mr. Brown, two or three questions about Exhibit H-6050. Does that exhibit state your understanding of the

value or efficiency of the Miller Root narrow-neck machine at that time?

A. Yes.

Q. You refer to "the Miller patent application that you kindly lent me in New York last week." I take it that would be Ed Miller?

A. Yes.

Q. Do you have any recollection of receiving or returning those applications?

A. I have a rather dim recollection of having taken them to Hartford from New York. Just what they were like, I could not tell you.

Q. What did you do with them?

A. They were returned wherever Mr. Belknap told us to send them. I don't remember where it was. We merely borrowed them to look them over and then sent them back.

Q. Did you receive a reply, either written or oral, to Exhibit H-6050, which is your letter of July 10, 1923, to Mr. C. B. Belknap?

A. I haven't been able to find a reply. I have no recollection of receiving one. I assume I got some sort of reply. [fol. 11447] The only thing I can tell you is I got an understanding somewhere that the rumor was unfounded, but I couldn't find any paper with reference to it.

Q. Did you see Mr. C. B. Belknap at any time shortly after July 10th?

A. I saw him on the 27th.

Q. Before that did you see him?

Mr. Isseks: I have no objection to you fixing any date, Mr. Wall.

Mr. Wall: I am trying to fix it for myself.

Q. Do you recall now whether you did or not?

A. I doubt if I saw him between the date of the letter and the 27th. I don't remember.

Q. Upon your return from Pittsburgh to Hartford did you give any further attention to the patent situation as between yourselves and Lynch?

A. Yes. I checked up quite soon after that on the patents that we owned and which we considered to be infringed by Lynch machines.

Q. Was anyone else in your organization assisting you in that?

A. Mr. Parham was following it quite closely. I was in and out on the Lynch matter, and this is one of the times I was in for a while.

Mr. Wall: I have had marked as Exhibit H-6051 a memorandum from S. F. Parham to R. D. Brown, July 11th, 1933, in regard to infringement of Hartford patents by Lynch No. 10 Machine.

I have had marked as Exhibit H-6052 memorandum of S. F. Parham to F. Goodwin Smith, July 17, 1933, re: [fol. 11448] Infringement of Hartford patents by Lynch No. 10 Machine, each of which I desire to offer.

Mr. Isseks: Your Honor will recall we have an arrangement with Judge Haight on behalf of Hartford, and myself on behalf of the Government, that when we make an objection and Your Honor takes these in evidence for purposes indicated by Your Honor and not for other purposes unless otherwise indicated by Your Honor, and I assume we have that continued arrangement.

The Court: It may be continued.

Mr. Wall: I assume they are offered for all purposes and are so limited.

Mr. Isseks: Yes.

The Court: They may be received.

Mr. Wall: I desire to read part only of H-6051.

(Part of Exhibit H-6051 is read by Mr. Wall.)

Q. Mr. Brown, do you have a copy of that exhibit before you?

A. Yes.

Q. Refer, please, to the handwriting on the first page, notes on both margins, and in the body of the document. Whose handwriting is that?

A. That is all my handwriting.

Q. What was the time and the occasion for putting those notes on the exhibit?

A. At or shortly after the date of the paper, and the occasion was to make notes of the matters covered by the various patents and the various claims.

(Exhibit H-6052 is read by Mr. Cole.)

Q. There is a reference in the second paragraph of Ex- [fol. 11449] hibit 6052 to the statements of the June 11th, 1933 memorandum. So far as I know that should be the

July 11th, 1933, memo, which was the exhibit immediately preceding, Exhibit H-6051?

A. Yes. I believe that is so. That is confirmed by a reference in the last paragraph in the paper which gives it as July 11th.

Q. At this time, Mr. Brown, that is from July 11th to 17th, 1933, what was the occasion for your considering the matter of the infringement of Hartford patents by the Lynch No. 10 machine?

A. That was so the management could be advised of the opinion of the patent men in carrying forward the negotiations with the Lynch Corporation.

Q. What was your opinion and belief on that subject?

A. My opinion of what?

Q. Your opinion and belief upon that subject?

A. That we did have patents that fairly read upon the Lynch Machine, and therefore were infringed by it.

Q. Mr. Brown, I show you a memorandum which we have referred to before, which is marked Exhibit 312, your memorandum of June 22, 1933, which I ask you to look at. Did you have occasion to reconsider that memorandum and the recommendations in it after your meeting with Mr. Bridges and Mr. McMurtrie on July 8th?

A. Yes, I obviously did, because I made a note on the first page, at the bottom of the page, which in typewriting speaks about an appeal which must be taken by about July 15th, and I noted "Bridges says July 24th."

Q. That is, in the interference proceedings between Lynch and Headley & Thompson?

A. Yes, that is it.

[fol. 11450] Q. And when was that matter discussed, if at all, with Bridges?

A. On July 8th, the only time I saw Bridges after the date of this Exhibit 312, in that year. Perhaps I have never seen him since.

Q. Now, the note on Page 3 of that same exhibit,—can you read it from the copy?

A. No, I can't.

Q. I have deciphered that as this: "No opinion now until we hear from Levis. 7-11-33." Can you make it out?

Mr. Isseks: That is right.

The Witness: Yes, that seems right.

Q. And that is opposite the statement in your memorandum of June 22nd as to renewing your recommendation of purchase of Headley & Thompson if Owens will pay half of the purchase and no suitable arrangement can be made with Lynch at the present time; is that right?

A. Yes, and then it goes on with a reference to the Lynch Corporation's present attitude, and I think—I take that note to mean that we have no opinion about that until we hear from Mr. Levis.

Q. And that is whether Lynch's present attitude is found to be such as to give a reasonable expectation of making a license arrangement with them?

A. Yes, that is right.

Q. And is it in regard to that matter that you note, "No opinion now until we hear from Mr. Levis—7-11-33"?

A. Yes, sir.

Q. And 7-11-33 is the date of the note, is it—not of the exhibit?

[fol. 11451] A. Yes, that is so.

Mr. Wall: Following that and merely to keep the sequence straight, there is another memorandum in evidence of July 28th, 1933, Exhibit 325, which refers to the same subject matter.

I have had marked as Exhibit H-6053, memorandum from R. D. Brown to F. Goodwin Smith, re: Owens Conference with Lynch; as Exhibit H-6054, a memorandum which we found in the files—I will ask Mr. Brown in a moment whether he knows anything about it. It is presented because it seems to me very similar in form to an exhibit which is now in evidence, "Outline of Proposed Agreement between H-E and LC."

Mr. Isseks: No objection to either one of those documents.

Mr. Wall: "Subject to detail changes by TCW" is the heading.

Also, as Exhibit 6055 a longhand memorandum by R. D. Brown dated July 27, 1933, each of which we offer.

Mr. Isseks: No objection, Your Honor.

The Court: All may be admitted.

Q. July 15, 1933, was Saturday, wasn't it, Colonel?

A. Yes, it was.

Q. Where were you the following week?

A. Well, I was in New York most of the week.

Q. Monday and Tuesday were you—the first half of the week?

A. Yes, I was in New York.

Mr. Wall: Now the next exhibit, if Your Honor please, H-6054, might be compared by Your Honor and counsel with Exhibit 322 bearing the same date. Exhibit 322, if I [fol. 11452] have it right, is a memorandum as to outline of proposed agreement between Owens-Illinois and Lynch, and this Exhibit H-6054 seems to follow, or to relate to a contemporaneously proposed agreement between Hartford and Lynch.

Q. Now, Colonel, have you seen this exhibit—do you know anything about it?

A. As far as I know, I haven't seen it until recently.

Q. Did it come to you at the time?

A. So far as I know, it did not.

Mr. Wall: It was found in the file, and produced for the reasons I have mentioned. Has it been the custom to read these in the details and sub-headings? I think we will not do it, then.

Q. I call your attention again to Exhibit 6048, on Page 2 there is a longhand note, in your handwriting, I presume?

A. Yes, it is.

Q. Read it for us, please.

A. The note says, "F. G. S., July 18, N. Y. C., Lynch to build excess HE machines if we go above 40% of machines in use—or sales in one year",

Q. Now, the "F. G. S." refers to whom?

A. Mr. F. G. Smith.

Q. And "N. Y. C." refers to what?

A. New York City.

Q. Now the rest of it refers to some provision turning upon the question of whether Hartford made 40% of machines in one year, is that it?

A. Yes. That was the suggestion that was reflected in a contract and later removed, which in substance was this: [fol. 11453] That if in any one year Hartford should build machines having a productive capacity greater than forty per cent of the combined productive capacity of all machines put out by Hartford and Lynch in that year, then

Hartford should make a certain payment to Lynch. This is the forerunner of that, and the suggestion here is that Lynch should build all machines in excess of the 40%.

Q. When you say all the machines, what kind of machines?——

A. Bottle making machines; forming machines, as distinguished from feeders and other sorts of equipment.

Q. And what sort of forming machine—what I mean is this: Will you state whether or not it had any reference to machines using the inventions of Hartford or of Lynch?

A. Oh, yes. Really, what we were talking about as a practical matter was the Lynch 10 Machine and the Hartford I. S. Machine.

Q. Now, was F. G. Smith in New York with you on the 18th of July, or how did you get that note on that paper?

A. Well, I can judge only from the note. I know that I was in New York, and I assume that I saw him for a part of the day or evening in New York.

Q. Now, when we come to Exhibit 6055, Mr. Brown, I wish you would undertake the burden of reading that. First, start with the initials at the top and tell us who the people are, and then read the longhand.

A. This is a two-page memorandum in my atrocious handwriting, originally written on yellow sheets, and entitled at the top, "N. Y. C. July 27/33", with a series of [fol. 11454] initials as follows: "WEL, CBB, FGS, WJB, RME, AH, SFP, RDB" and entitled, "Lynch Deal".

Q. Who are those people represented by those initials?

A. Messrs. W. E. Levis, C. B. Belknap, F. G. Smith, W. J. Belknap, R. M. Eldred, Amory Houghton, S. F. Parham, and myself.

Q. Very well—go ahead.

A. The sub-heading is, "*W.E.L.*"—that is W. E. Levis—"*wants to*—

1. Eliminate royalty or license fee on new Lynch machines.

2. Keep out future inventions—HE to LC & LC to HE. OI will give LC OI future rights (feeder fed) in return for agreement by LC not to build suction machines and to give OI rights under future LC suction inventions.

3. Mention specifically which rights are retained by HE and rights that go to LC.

"*C.B.B.* LC's fear is that they are now the big people in forming mch. business, but unless HE gives them future impts., LC may be squeezed out. Thinks LC will accept suggestion that if HE's output becomes greater than 40% of combined output of LC & HE, then LC can at HE's option build the excess or"—

with a sentence that goes off at the end and starts again with—

"or get from HE the mfr. profit on excess, or LC (can cancel with no license for future except H & T)"—

[fol. 11455] that is meaning Headley & Thompson. And on the margin the words "get out".

Q. What does that mean?

A. Apparently the proposed right of Lynch to get out or cancel.

(Continues reading.)

"The 40% is based on productive capacity & annual output of both LC & HE."

The next page—

"*W.E.L.—Lynch Deal is:*

"LC to buy Miller for cash. To get the money by selling to OI for cash. (150,000) Suction rights of LC & Miller & selling to a third party 10,000-plus shares of LC stock (300,000).

"HE to buy H&T by itself ($200,000).

"LC gets

1. Physical assets of O'Neill.
2. Miller Co. assets.

"LC gives—

Restriction of its output and Miller's to HE licensees.

OI will contribute $200,000 net to the deal.

LC to run Miller as Miller —— of L.C.

Be sure that contract gives no license from HE to LC on outstanding machines."

Q. Do you have any recollection of anything else that occurred at that meeting?

A. No, I have not.

Q. Or of the meeting itself?

A. No. It is curious to me, but I don't remember it at [fol. 11456] all. I was in New York on quite a different matter, having to do with one of the lawsuits, and so was Mr. W. J. Belknap. We were apparently called into this meeting, because I made this memorandum of it.

Q. Were you in Hartford all of the year 1933—that is, I mean in Hartford or nearby?

A. No.

Q. Did you go away at some time? If so, when?

A. I was away in Europe from the 2nd of August until the latter part of September, and the latter part of the year I was away from Hartford a great deal.

Q. Now, before you went to Europe, what in general had occupied your time during the first seven months of 1933?

A. Well, the most important jobs that come to my mind were the litigation in regard to the Shawkee Feeder which occupied most of May, June and July. There were some contract matters, particularly the Ball Brothers contract, negotiations with my former clients, the Tygart Valley Company, and there was a matter we had up with the Hazel-Atlas Company in regard to their feeder operations, and, probably more time-consuming than any, there was an accounting that we had had going for some time in one of the Obear-Nester cases.

Q. Can you give us some idea of how much consecutive time you gave to the Lynch matter in 1933?

A. Well, except perhaps for the second week in July, I should say it was a matter of a day or two at a time on two or three occasions. I should judge from July 8 to 11 or 12, I spent a good deal of time on the Lynch matter, and that was the only period of any great length that I can recall or find out about.

Mr. Wall: You may cross examine.

[fol. 11457] Cross-examination.

By Mr. Isseks:

Mr. Isseks: I only have a few questions, Your Honor.

Q. Now, do you have the Hartford Exhibit 6048 in front of you?

A. Yes, I have it.

Q. Turn to the last page, the second full paragraph. Or before I ask you about that, the memorandum sets forth your contemporaneous recollection of what transpired, although your present recollection is fairly blank—is that right?

A. It is not very good.

Q. But at that time you set down, did you not, what you recalled took place at the meeting?

A. Yes.

Q. And what you set down there was a correct statement of what took place?

A. Yes.

Q. Now, in the second paragraph of this exhibit you state,

"Mr. McMurtry suggested as a means of avoiding legal complications that the Lynch Corp. might purchase for cash not only the O'Neill and Ed Miller physical assets",

and so forth. Have you any present recollection as to what laws he was referring to?

A. No, I don't remember the incident at all.

Q. Well, alright, sir. Then you say further on in that same paragraph: "Mr. McMurtry also outlined the present attitude of the Lynch Corp. as follows:

"1. All parties agree that it is desirable to corner the forming machine business."

Now, when you dictated this memorandum, was it your [fol. 11458] understanding that you were referring to his statement of the attitude of all parties in the deal?

A. Why, I should suppose—you understand this is not recollection, but I should suppose from the wording, it was the then present attitude of the Lynch Corporation people.

Q. You mean he was referring to all parties in the Lynch Corporation?

A. That would be the way I would read it.

Q. You knew at that time, though, and the memorandum so indicates, that Mr. McMurtry and Mr. Werbe had had certain conferences with the Owens people?

A. I doubt very much if I knew that. I might have.

Q. I think you stated in a memorandum earlier.

A. Oh, yes—I do see now that the second paragraph on the first page indicates that.

Q. That they had a conference with Mr. Levis at White Sulphur Springs?

A. Yes, it does.

Q. And you wouldn't say now that Mr. McMurtry's reference to all parties applies only to his understanding of the Lynch Corporation rather than his understanding of all the persons he understood were to be in the arrangement?

A. I have to figure that out the same as you do from the paper, as I don't remember.

Q. I see—you have no independent recollection, save as you gave Mr. Wall a very short statement?

A. That is so.

Q. Now, turning to Exhibit H-6053—that, too, is a con-
[fol. 11459] temporaneous statement of a telephone conversation you had with Mr. C. B. Belknap?

A. Yes, that is so.

Q. You have no independent recollection at all of that?

A. No, I have not.

Q. But you did set it down contemporaneously with the telephone conversation?

[fol. 11460] A. Yes.

Q. And when he told you over the telephone that he and Mr. Levis "have cooked up a scheme", he didn't tell you at the time what the scheme was, as the memorandum indicates?

A. No, I wouldn't expect he would put it that way. I think that was my facetious way of reporting what he told to me.

Q. He said something that resulted in your using the colloquialism?

A. That is right.

Q. You didn't make it up, yourself, but it is based on something he said to you?

A. Oh, yes, he told me that they had a suggestion that they thought might be acceptable.

Q. Now, do you have any present recollection of what that "cooked up" scheme was when you saw him sometime thereafter?

A. Why, I think, without any clear recollection of detail, I think that was the 40% matter that we have spoken of.

Q. Now, look at Hartford Exhibit 6055—you have a copy of that?

A. Yes.

Q. Is it a fair statement to say that what is set forth therein as coming from Mr. Levis or Mr. C. B. Belknap, and so on, is the scheme which he said he was going to tell you about after he saw you?

A. Not the whole of it. I would take it that part of the memorandum is along that line.

[fols. 11461-11462] Q. The second half of the first page?

A. Well, the 40% matter.

Q. Now, that second half of the first page, as you indicated to Mr. Wall, eventually got into the contract in a different form?

A. There was a 40% provision in the contract, yes.

Q. And that was put in Section 8 of Exhibit 330, and later on was cancelled in '38, I believe, was it not?

A. Well, I don't remember that it was the Section 8, but the provision was cancelled in '38.

Q. And was put in in '33?

A. Yes.

Q. Now, looking again at Exhibit 6055, that, too, is a contemporaneous statement, made at the time of what transpired at the meeting, is it not, sir?

A. Oh, yes; it is a memorandum I made during the meeting.

Q. You made it during the meeting?

A. Yes.

Q. And it sets forth what your then understanding was that these various gentlemen,—namely, Messrs. Levis, C. B. Belknap, and others, had in mind, because you state it there?

A. Well, what they said.

Q. What they said, yes?

A. Yes.

* * * * * * *

[fol. 11463] Thereupon, C. B. Belknap, recalled for further examination, testified as follows:

Examination.

By Mr. Wood:

Q. You have testified previously in this case, Mr. Belknap?

A. I have.

Q. Last spring, as a witness called by the government?
A. Yes, sir.
Q. Now, I direct your attention to the month of June, 1923, at which time you testified previously you and Mr. Dorsey started having meetings in respect to settling the suits of Owens against Hamilton and Hartford which were pending at Pittsburgh, and I shall ask you whether or not you now have any contemporary document, or found any contemporary document, which discloses your state of mind at or about that time?
A. Yes, I have. Our discussion included the settlement of not only the suits, but all controversies between them, including interferences pending, and all suits.
Q. I show you a carbon copy of a letter dated April 17, 1923, purporting to have been written by Henry W. Carter to your brother and to you, and ask you whether or not you can identify this document, and whether you received a copy of the document?
A. I did. It was a request from Mr. Carter for Mr. Milans and myself to make a complete report as to what the status of the Owens Company was in the various controversies. There had been, a few months preceding that, a large number of very broad interference claims sug-
[fol. 11464] gested to us in the Lott cases and other cases, and the company wanted a complete report as to what we felt our chances were and the chances of the other people.

Mr. Wood: I offer the document into evidence.
Mr. Isseks: No objection.
The Court: What is the number?
Mr. Wood: The number is O-6056.
Mr. Isseks: No objection, Your Honor.
The Court: It may be admitted.

(Exhibit O-6056 read by Mr. Peters.)

[fol. 11465] Q. Mr. Belknap, I hand you two documents that are marked O-6057 and O-6058, respectively, and ask you if you can state what these documents are.
A. O-6057 is the report which Mr. Milans and myself prepared and rendered in response to Mr. Carter's request of April 17, 1923. It was accompanied by a much more detailed report of specific interferences which was marked classification of feeder interferences in connection with report on feeder situation by Milans and C. B. Belknap.

Q. In the analysis of the feeder interference situation, in those reports were you taking it up from the point of view of Owens' participation in those interferences?

A. Yes. In the interferences that we were involved in, and there were some other interferences which may have been referred to that we were not in, but my recollection is that we took it up as the interferences in which Owens was involved in. It is some forty-one pages and I don't want to take the time to run through it, but I think it is very much on the question of what were Owens' interferences.

Mr. Wood: I am going to ask that simply the first of these two documents be read, inasmuch as the witness testified the second was a more detailed statement than the first.

Mr. Isseks: We have no objection if it is not accepted by Your Honor on any issue of prior art, validity or infringement.

Mr. Wood: I started the examination entirely as to the witness' state of mind, and that is the purpose, to show the [fols. 11466-11467] witness' state of mind and the state of mind of the corporation to which he is reporting.

The Court: O-6057 may be admitted.

Mr. Isseks: He offered both of them.

The Court: Is the next one on the plug feeder?

Mr. Wood: Yes. I am sorry we have failed to supply photographs of the covers, but I will have them made.

The Court: Is the plug feeder O-6058?

Mr. Wood: Yes. O-6058 is the plug feeder.

Mr. Isseks: I assume counsel will state they were prepared shortly after April 17, 1923?

Mr. Wood: I will ask the witness when they were prepared.

Q. Can you give the date on which they were prepared, Mr. Belknap?

A. Yes. They were prepared sometime prior to the middle of May, 1923. I find in those reports we refer to the fact that an application on the swinging burner, mechanical application, had not yet been allowed. We were making every effort to get it allowed and in the May 22nd report I find it had been allowed. So the reports were made sometime between April 17, 1923, and May 22, 1923.

* * * * * * *

[fol. 11468] C. B. BELKNAP thereupon resumed the stand for further direct examination by Mr. Wood.

Q. Mr. Belknap, I show you Exhibit O-6057, the report on the feeder situation by C. T. Milans and C. B. Belknap, and I ask you whether or not this report states correctly the facts as you understood them at that time?

A. It does.

Q. And do the opinions expressed in the report indicate your opinions as they existed at that time?

A. It does.

Q. Now, I notice that on Page 11 of the report there is a heading "Conclusion", then the statement:

"From the facts set forth in the above report we have reached the following conclusions regarding the outcome of the various feeder interferences and applications of which we have knowledge."

[fol. 11469] And then you list, or, rather, then you make a prognostication as to probable outcome. Can you go through that very briefly and indicate whether or not the events turned out as you prophesied? Now, there is the "A", then the "a", "b", "c", "d" and "e" on page 11. Now, in regard to the combination of plug and shears arranged to cut in the line of the plug, what did you refer to there?

A. Well, that was the Lott patent, known as the divisional, on the plug and shear combination which had already issued.

Q. That was sometimes called the "Baby Lott"?

A. Some people called it that. I preferred to call it the "divisional Lott".

Q. But you have heard it called "Baby Lott"?

A. Yes. The second one "b" was the claims that were in that same patent; and "c" was the original Lott 1909 case, which also had issued at the time we made this report.

Q. That is, the items covered by "a", "b" and "c" were in the issued Lott patents existing at that time?

A. Yes. The item "d" was involved in the interference in which Lott ultimately prevailed.

Q. Now, I notice you have in parenthesis under "d", "such as now used by Federal". Were Hartford and Owens using feeders commercially which were involved, or which would be covered by the issues of the interference to which you are referring?

A. Now I think by the time this report was made, Federal was the only one that was using that feeder. Item "e" was the one which I referred to earlier in the report as [fol. 11470] hoping that we could get out, and which we did issue on June 12, 1923, as Lott Patent 1,458,834.

Q. Did that patent cover the Federal feeder?

A. It did. Item "f", "Reheating by radiant heat to remove shear mark". I think Lott ultimately prevailed in that, but my memory would not enable me to state that definitely now, tracing it down.

Item "g",—"Rotating plug to avoid chilling of glass on one side of plug", resulted in the Soubier patent.

Q. Now, under the heading "B":

"The Hartford-Fairmont Company have not to date succeeded in getting the issuance of any United States feeder patents of a controlling nature, but in our opinion will ultimately secure patents on the following features",

and "a" is "Adjustments of the plug". How did that come out?

A. Well, I am much more clear as to how the items "A" came out, because they were Owens matters; but it is my recollection that under Section "B" that "a", "b", "c", "d", "e", "f", and "g", all went to Hartford, at least I know they did not go to Owens.

Q. Now, was Owens using a reciprocating plunger or plug feeder commercially in its factories at the time you made this report?

A. It was.

Q. Will you tell us whether or not Owens was using on its plug feeder or plunger feeder, any of the subject-matter which you predicted would go to Hartford untimately, and [fol. 11471] if so, what, as best you can remember?

A. Well, I think the first three,—"a", "b" and "c",—the adjustments of the plug and shaping by means of a plug, and feeding suspended gobs,—they were certainly using those.

Q. That is, Owens was using those commercially?

A. Yes. Now, relative movement—"d" and "e", and "f" and "g", I do not think that they were using. They were, I believe, using "f" in some cases.

Q. Now, under item "C":

"The Federal Glass Company have not to date succeeded in getting the issuance of any United States patents of a

controlling nature but in our opinion will ultimately secure patents on the Tucker and Reeves particular form of cup feeder and either they or Hartford-Fairmont will, in our opinion, ultimately secure patents on the following features:"

and then follows "a", "b", "c" and "d".

Can you tell us how that came out?

A. Tucker & Reeves did secure patents on this particular form of gob feeder, and we made the statement in this report that either Federal or Hartford would secure patents on "a", "b", "c" and "d", because there was a question from the interference testimony that had been taken—we had been fighting these interferences from May 10,—I believe was the time I started,—1919, down to May, 1923, and there had been a great deal of testimony taken and there was some question as to whether or not Hartford could [fol. 11472] carry its date back of Turner & Reeves', and therefore we made "c" in the alternative form, and I think that "a" and "b" went to Hartford and that "c" and "d",—at least in some part,—went to Tucker & Reeves.

Q. Didn't Hartford also secure some claims on timing and adjusting instrumentalities, such as the differential patent?

A. I think they did, but my recollection on that is not very clear.

Q. Now, to summarize the situation as it existed at that time, Owens had certain issued patents which it believed Hartford infringed, and on which it might sue Hartford,—the Lott patents, is that correct, Mr. Belknap?

A. Yes, it had, at the time we made that report, it had two Lott patents which we considered that every feeder that was then in existence feeding gobs, infringed, and we later secured, in the June, 1923, a patent, one which we believed covered the Federal feeder more in detail.

Q. Now, was Owens on the, I will say, defensive or prospective defensive in respect to any patents which Hartford-Empire might obtain?

A. I think those conclusions, written at the time, state about as clearly as I could, what the overlapping controveries were. At the time we wrote that report we were advising the company that we thought that the thing was going to result in a complete stalemate, that the essential features were going to go to Hartford or Hartford and

Federal, and we already had issued patents, and some we expected to get out, that would be full protection for the [fol. 11473] Owens Company, and ultimately there was going to be a complete stymie between the two companies.

Q. I notice at the top of page 6 of this Exhibit O-6057—and I believe the statement appears elsewhere in the correspondence:

"Under the circumstances, we recommend vigorously prosecuting motions to dissolve on the question of non-patentability."

Just what practice does that refer to?

A. Well, it is the practice that is generally engaged in in connection with fighting out interferences, where you feel that you cannot prevail, you take the position that the invention is not patentable to anyone in view of the prior art, and do the best job you can to establish prior art as anticipating the claims.

Q. That is a conventional practice?

A. I think that is conventional practice by practically every patent attorney. He tries to take the position, if he cannot win in connection with either an interference or suit, that the prior art anticipates.

Q. Now, I will show you page 5 of this report, which has under the heading (4) "Feeding of suspended gobs", near the bottom of the page, and the top of page 6. Now, I want to ask you a question about it. At the top of page 6 you "recommend vigorously prosecuting motions to dissolve on the question of non-patentability in view of the British patent" number so and so, "Mansfield, Hulburt, Proeger, Good, and possibly others".

[fol. 11474] Now, I notice that the Hitchcock patents are not mentioned in your recommendations on a motion to dissolve, and I will ask you just why, if you can remember, you did not include the Hitchcock patents?

A. Mr. Milans and myself did not consider that the Hitchcock patents showed a suspended charge feeder. Those six interferences were declared along the last part of 1922, and contained very broad claims, which really was the occasion for our being asked to make a report as to where we were going to come out.

Q. Now, at the bottom of page 5, there is a statement,—this is still under the heading of "Feeding of Suspended Gobs," and still refers to Exhibit O-6057:

"The only Owens Bottle Company application involved in these interferences is that of Lott but because of failure to specifically disclose this subject-matter in his 1909 application (although he may prove a date of conception as early as 1906), he has very little chance, if any, of prevailing."

I will show you a drawing marked Exhibit 0-6059, and ask you if you can identify the drawing and explain what you meant by the statement at the bottom of page 5 of this report.

A. This Exhibit O-6059 is a photostat of the drawing which Lott testified he made in 1906 and which was identified in the interference by the attorney who prepared the case, as being one of the papers that was before him, or either before him or the draftsman, at the time they made [fol. 11475] the application. We felt that this exhibit showed the suspended gob above the mold "a" in the upper left-hand figure, but when the Lott patent application was prepared the draftsman showed the charge as resting in the mold. We felt that in the interference we had established the conception of the suspended charge feeding by Lott but we could not get sufficient corroborating testimony as to any actual reduction to practice.

Q. I will interrupt you just a second to ask you whether or not substantial corroborating testimony is required by the Patent Office in order to prove an early date in an interference proceeding?

A. Yes, the person to first file the application in the Patent Office is the one who obtains the patent, unless there be an earlier inventor who proves conception and proves diligence up to the time of the filing by the other man. He has to carry that burden.

Q. And he has to have corroboration?

A. He has to have corroboration as to that. And Lott was an independent inventor, and like a great many of the independent inventors who work alone, he was very secretive about what he did, and we spent many months trying to find corroboration, and while we found fragments of it, we reached the conclusion by the time we made this report in 1923, that he didn't have more than a very remote outside chance, but he did have that, and we insisted, after the settlement of the controversy between Owens and Hartford, that the Patent Office pass on that feature.

[fol. 11476] Q. You mean the feature of whether or not Lott invented suspended charge feeding?

A. Yes.

Q. And how did the Patent Office decide?

A. The Patent Office decided that he did not.

[fol. 11477] Q. Now in respect to the issued Lott patents which you mentioned, I would like to ask you whether or not it was Owens' position and your position that those patents disclosed suspended charge feeding?

A. I think we contended in the Patent Office in the interferences that they did, but as far as the issued patents are concerned we did not contend—we contended that they covered methods and mechanisms which were necessary for anybody to use if they were going to use suspended charge feeding, but that they did not specifically cover suspended charge feeding.

Q. Will you explain in just a little more detail what mechanisms and methods are disclosed by the Lott patents which you contended were necessary in the feeding of suspended charges?

A. Well, in the original Lott patent there were a great many claims, but they finally got down to Claim 48, which covered the retarding of the glass prior to the time of severance, so that when the shears cut through the relatively thick neck of glass there would be a retarding influence which would tend to lift the glass off the shears, and as far as I know every feeder at that time was using some means of doing that retarding. The second patent covered broadly the feature of feeding the glass through an orifice and having a plunger cooperate with the orifice so as to control the glass, and then having a mechanical shear cutting in the line of the plunger, and Mr. Milans and I both thought it was quite essential to have this type of combination, and everybody who had a plug feeder at that time did have that combination, and that was broadly covered in Claim 11 of that patent.

[fol. 11478] Q. Now, at this time, that is the Spring of 1923, was the Owens Bottle Company utilizing both suspended charge feeding and its suction machines in its commercial operations?

A. Yes.

Q. Now, what was your opinion at the time as to the future plans of the company as to whether they proposed

to continue to use suction or to go to suspended charge feeding? Or was there any clear-cut policy at the time?

A. No, I don't think there was any clear-cut policy. Mr. Owens often discussed with me as to which was going to prevail, but he, being the father of the suction process, leaned to the suction process. But there was a great doubt in the company's mind as to whether the other was going to supersede it or not, and therefore we were asked to do everything we could to protect the company's interests in connection with the feeder.

Mr. Isseks: Are you offering this document, Mr. Wood?

Mr. Wood: I offer the document in evidence.

Mr. Isseks: Your Honor, we make no objection, on the understanding, as counsel indicated yesterday afternoon, that all the contents of these documents are being offered on the issue of the state of mind of the Owens Bottle Company, and with that understanding——

Mr. Wood: And the witness.

Mr. Isseks: —and the witness, and with that understanding we won't make any objection to any of these documents.

The Court: O-6059 may be admitted.

Q. Now, Mr. Belknap, I think this is in the record, but I would like to get into the record very clearly at this point the sequence of events in the Spring of 1923.

[fol. 11479] Mr. Wood: And do you mind me leading a little, Mr. Isseks, at this point?

Mr. Isseks: No.

Q. A set of new interferences involving very broad claims was declared by the Patent Office on December 13, 1922; is that correct, Mr. Belknap?

A. No, they were declared very shortly before we made that report.

Q. Now, were you engaged in any of those interferences on behalf of Owens?

A. Well, Mr. Milans and myself were in charge of the interferences, you might say, and that was taking probably sixty or seventy per cent of my time in the practice.

Q. And in January, 1923, the case of Hartford-Fairmont Company against the United States Glass Company was argued before Judges Schoonmaker and Buffington at

Pittsburgh, the two judges sitting jointly; that is correct, I believe?

A. Yes, that is what I understood.

Q. And that case was decided, I believe in the early part of May, 1923?

A. It was decided some time in 1923; I wouldn't know the month.

Mr. Wood: I think the record shows it was May, 1923.

Mr. Isseks: Just make the statement, Mr. Wood. I will take your statement for it.

Mr. Wood: I am just re-grouping the events. I think they are all in the record.

And then on June 6, 1923, Owens sued Hamilton at Pittsburgh for infringement of the Lott patents. I think that is in the record very clearly.

Q. Now, I will ask you, Mr. Belknap, if you know any [fol. 11480] reason why Owens sued Hamilton at Pittsburgh rather than suing Hartford at Hartford?

A. Well, I think one of the governing factors was the fact that Judge Schoonmaker in Pittsburgh was fairly familiar with the mechanisms involved, and he also had in his opinion pretty much read the Hitchcock patent out as prior art.

Q. And he had also held, had he not, that the Brookfield patent showed a combination of elements important for the plunger feeder operation?

A. Yes, and when the suits were filed the Brookfield patent, as I recall it, were included with the two Lott patents?

Q. That is, there was a second suit of Owens Bottle Company and Hazel-Atlas against Hamilton on the Brookfield patents?

A. That is my recollection.

Q. Now, I would like to refer you to the testimony of Mr. Blair at Page 3,000 of the record:

"Q. Did you still feel you had a strong position on the Lott patent?

"A. I had more confidence in our ability to at least stop the other plug feeding operation.

"Q. Did Mr. C. B. Belknap share that view, as you remember it?

"A. Yes, I think he did. I think both he and his brother, both did.

"Q. Do you remember whether Mr. Carter shared that view?

"A. I think Mr. Carter changed his opinion pretty frequently. I was inclined to think that he was the weakest of [fol. 11481] all those that I conferred with, the weakest in support of the value of those patents.

"Q. You mean with respect to his confidence in the Lott patents?

"A. Yes."

Q. Now, I will ask you whether or not——

Mr. Isseks: I think it should be clear that that was not on the examination of the government, because my recollection is that we didn't ask Mr. Blair anything like that.

Mr. Wood: I asked him that.

Mr. Isseks: That is what I thought.

Q. Now, I ask you whether or not that testimony of Mr. Blair's coincides with your memory of the situation?

A. Yes, it does. I might add that as to the Lott original patent, Mr. Carter didn't blow from hot to cold on that, because he was against it almost all the time. As to the plunger patent, I think he generally felt on that patent that it was good, and I think that is what Mr. Blair is referring to when he said Mr. Carter blew hot and cold on it. Mr. Milans and myself and my brother, W. J. Belknap, who had consulted with us during these interferences, particularly Milans and myself, had lived with this controversy for four years, and we felt that we knew more about it than Mr. Carter did, and there was quite a violent controversy raging between the different attorneys as to the value of that one particular Lott patent.

Q. Now, I would like to show you Government Exhibit 613, a letter written by Mr. Carter to Mr. Blair on January 28, 1924, particularly with respect to the Hitchcock demon- [fol. 11482] stration, and I would like to point out the second paragraph from the top of Page 2, which has the heading, "Lott Plunger-Knife Combination Not Affected", and then goes on to state, "Such demonstration, however, still leaves Lott's plunger-knife combination a novel one, and in some respects even accentuates its value. And while it does to some extent strengthen the argument that this combination involves nothing more than the substitution of the Hitchcock shears for the scraper cut-off of Brookfield, I should say that on the whole the situation as to Lott's

plunger feeder combination (Claim 11 of his Divisional patent) remained unchanged". Now, I ask you whether or not Mr. Carter's difference of opinion went to the Lott plunger-knife combination, or merely to the Lott parent patent?

A. It went to the Lott parent patent mostly, but Mr. Carter I think sometimes got pessimistic about the entire Lott situation. I might say that Mr. Carter had been an expert, what we call a patent expert, in practice for a number of years before I knew him, and generally for the defendant, and he was pretty apt to take a pessimistic view towards the patents in suit as distinguished from the prior art.

Q. Now, I will ask you one more question on that. Was there a controversy between Mr. Carter on the one hand, and you and your brother on the other hand, as to the value of the Lott method patent?

A. There certainly was a very decided one.

Q. And did some lawyers in the case side with Mr. Carter and some with you and your brother?

A. I think the general line-up was that Mr. Carter some-[fol. 11483] what sold Mr. Davis and Mr. Winter—Mr. Winter being the local counsel at Pittsburgh—on his viewpoint, and that Mr. W. J. Belknap, Mr. Milans, and myself felt the opposite, and that we had lots of controversies, and Mr. Rector, who was really the head of the firm, and the company considered as their senior counsel in the matter, finally decided that we would retain both the plunger shear combination patent and the original patent in so far as Claim 48 was concerned, which was the retarding feature I testified to.

Mr. Wood:

Q. Now, the correspondence which will be put into evidence refers to a number of different individuals, and in order to make it more intelligible, I will ask you to identify the various counsel and experts that were on Owens' staff in connection with the litigation of Owens against Hamilton and Hartford. Now, first, just who was Mr. Rector?

A. Mr. Rector was the senior member of the firm of Rector, Hibben, Davis & Macauley, of Chicago, and Mr. Davis and Mr. Rector were the two men of that firm who had anything to do with the litigation.

Q. That was a very prominent Chicago firm at that time, wasn't it?

A. I would say it was one of the two or three leading firms in Chicago.

Q. Now, who was Mr. Winter—more in detail?

A. Mr. Winter was a patent lawyer in Pittsburgh, whom I knew very little of.

Q. He acted as local counsel, I believe you said?

A. He acted as local counsel in the case.

Q. And who was Mr. Milans?

[fol. 11484] A. Mr. Milans was a member of the firm of Milans and Milans, consisting of his brother, Joseph H. Milans, and Calvin T. Milans. The one referred to as Mr. Milans here was always Calvin T. Milans because he was the member of that firm who was active with me in the interference matters.

Q. And there is a Mr. Arthur Browne mentioned—can you tell us who Mr. Browne was?

A. Well, I have no recollection of ever having anything to do with Mr. Browne in this case. He was a so-called patent expert witness, who I think was called into the case towards the tail end, as Mr. Carter decided that he couldn't —because of his feeling about the Lott patents, that he didn't want to act.

Mr. Wood: Now, I would like the record to show at this point that the government has, and has had among its TNEC papers, a document by W. J. Belknap written on February 23, 1924, entitled, "Comparison of Lott patent" —number so and so—"and Hitchcock patent"—number so and so. That is correct, is it not, Mr. Isseks?

Mr. Isseks: That is right. And letter accompanying it, dated February 23, 1924, W. J. Belknap to Mr. Frank Parker Davis, with copies to Messrs. Winter, Carter and Milans.

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[fol. 11485] Mr. Wood: Now, we would like to offer into evidence——

Mr. Isseks: No objection.

Mr. Wood: —the letter from Mr. W. J. Belknap to Frank Parker Davis, dated February 23, 1924, as Exhibit O-6060, and the accompanying report, entitled "Comparison of Lott Patent No. 1,382,994 and Hitchcock Patent No. 805,-068," the second being Exhibit O-6061.

Mr. Isseks: No objection.
The Court: They may be admitted.

(Exhibit Nos. O-6060 and 6061 then read by Mr. Peters.)

Mr. Wood: The decision of the Court, that is, of Judge Schoonmaker with Judge Buffington sitting, was attached to that. I take it the Court does not want the decision, either read or included in the exhibit?

Mr. Isseks: I think it is reported, Mr. Parham tells me, in 2 Federal 2nd, 109.

Mr. Parham: That is correct.

Mr. Wood: In order to understand this particular controversy and the exact state of facts existing at the time of the settlement of the Hamilton litigation between Owens and Hartford, it is rather necessary to understand the decision of Judge Schoonmaker at the time in order to interpret the letters written by the lawyers. I would like to point out near the end of this decision, I won't go into it at length, [fol. 11486] just one important point about which Judge Schoonmaker says:

"The use of the plunger to regulate the flow of glass through a discharge orifice was disclosed to the glass art by the Brookfield patents, filed on November 15, 1901, and prior to the date of filing of the plaintiff's Hitchcock patent. To our mind, the Brookfield patents disclose all the elements necessary for feeding separate gobs or measured charges of glass to molds, and also disclose that the gobs are depending below the discharge orifice at the time of severance from the stream of flowing glass."

That was stated by the Court. You will remember Mr. LaFrance testified that both he and Mr. Owens testified for the defendant in that case, and we put in evidence a large picture of a literal Brookfield with a three-blade shear.

I also would like to state that this letter of Mr. Belknap's that has just gone into evidence is not offered for the purpose of impeaching the testimony of the witness Peiler or showing he perpetrated any sort of a wrong demonstration. In fact, we gave the government earlier in the week the report of one of our engineers. It was introduced in evidence, but has not been read, in which our engineer said he thought it was a perfectly good demonstration of Hitchcock. I am merely introducing the letter to show there was

a controversy among counsel as to whether it was a good demonstration of Hitchcock or not, and they took different points of views and argued about it. I want to show which [fol. 11487] one ultimately prevailed.

Q. I will ask you whether or not you and Mr. Milans wrote a letter commenting upon your brother's report,—whether you wrote that letter, not Mr. Milans?

A. Well, I wrote the letter at Mr. Milans' office in conference with Mr. Milans. I signed the letter myself rather than the two of us jointly.

Q. I will show you a letter which is marked Exhibit O-6062, and——

Mr. Isseks: No objection.

Mr. Wood: I offer the letter in evidence,—dated February 27, 1924.

The Court: It may be admitted.

Mr. Wood: I will also have marked a memorandum which was attached to it but I will not have the memorandum read because it is simply a rehash of material previously discussed, as Exhibit O-6063.

Mr. Isseks: No objection.

(Exhibit O-6062 is read in evidence by Mr. Peters.)

Q. "Cal" refers to Mr. C. T. Milans?

A. Yes.

Mr. Wood: I am not going to have his memorandum read because it is a recapitulation.

The Court: You have that marked 6063?

Mr. Wood: Yes. May 6063 be admitted?

The Court: It may be admitted.

Mr. Wood: I don't know whether or not the record in this case shows that Judge Buffington, who was presiding judge of the Third Circuit Court of Appeals at the time, sat with [fol. 11488] Judge Schoonmaker at the argument of the case of Hartford-Fairmont Company vs. United States Glass Company.

Mr. Isseks: The opinion recites it right on the top.

Mr. Wood: The reason I was doubtful, was because the copy of the opinion I got here doesn't show it.

Mr. Isseks: There it is right there.

Mr. Wood: Excuse me. It does show it.

Q. I will show you a document which I have marked——

Mr. Isseks: There is no objection.

Mr. Stecher: Let him give the description first.

Mr. Wood: You don't object? I will give a description. I have marked the letter to C. B. Belknap from C. T. M., which is Mr. Milans, dated March 5, 1924, as Exhibit O-6064, and I offer it in evidence.

The Court: It may be admitted.

(Exhibit O-6064 is read by Mr. Peters.)

Q. I will ask you, Mr. Belknap, what it meant by the "two-cam" as distinguished from the "one-cam"?

A. It is my recollection that in place of the enclosed circular cam that is shown in the Hitchcock patent the demonstration device contained separate exterior cams which could be adjusted.

Q. Was there a dispute at the time as to whether or not the cam used on the Hitchcock feeder was a proper cam in accordance with the disclosure of the Hitchcock patent?

A. W. J. took exception to it, and Milans and myself did not regard that they had a right to change both the structure and mode of operation.

Q. But did others in the Owens camp think it was a proper cam?

[fol. 11489] A. I think Mr. Carter did, and some of the other people.

Q. So that there was a difference of opinion?

A. I might say that controversy always arises where the demonstration of any prior art device is made which differs in any respect from an exact copy of the patent. It is a customary thing for the defendant who finds himself with no prior art patent which completely anticipates the patent being sued on to build the prior art patent as close as he can to what is shown in the patent, and to show that what changes he made were just those within the skill of the mechanic. And then that is the position they took they had done in that case, but Mr. Milans and myself considered that they had gone beyond that and they had completely changed the method of operation. That was a matter for argument even between our own attorneys, and in the Owens Company there was controversy about it.

Mr. Wood: There are no photostats of this letter, but Mr. Isseks has seen the letter. It is a letter dated March

13, 1924, from Edward Rector to William J. Belknap. I take it there would be no objection to admitting it?

Mr. Isseks: No objection. I understand, of course, all this goes in to show the state of mind of the witness and the Owens Bottle Company.

Mr. Wood: I wish to make it very clear we are not attempting to determine at this very late date whether the majority opinion or minority opinion was the right opinion. We are merely trying to show there was a controversy in the Owens crowd, and which point of view prevailed in the Owens' organization.

[fol. 11490] Now, I introduce in evidence a letter dated March 13, 1924, from Edward Rector to William J. Belknap, as Exhibit O-6065.

The Court: It may be admitted.

(Exhibit O-6065 is read by Mr. Wood.)

Q. Now, Mr. Belknap, was there such a conference in Chicago in which the varying points of view were presented to Mr. Edward Rector?

A. Yes, there was. I was present at one of those conferences, but I can't testify definitely as to whether W. J. was present at the same time that I was, but I do know that he went over there for the sake of presenting again the views which I had presented to Mr. Rector.

Q. Mr. Rector, you say, was chief counsel for Owens in the case?

A. Yes. He was the court of last resort.

Mr. Wood: Now, I have had marked for identification a letter from C. B. Belknap to C. T. Milans, dated March 25, 1924, as Exhibit O-6066, and a reply from Milans to C. B. Belknap dated March 27, 1924, as Exhibit O-6067.

Mr. Isseks: What are you going to do with the telegram?

Mr. Wood: I am going to leave that out unless you want it. It is just an extra piece of paper.

Mr. Isseks: We don't want it.

Mr. Wood: I will tear out the telegram which is attached to the first exhibit, which doesn't add anything. I offer them in evidence.

The Court: They may be admitted.

(Exhibits O-6066 and O-6067 are read by Mr. Peters.)

[fol. 11491] Q. Now, does that letter you wrote correctly state the fact that Mr. Rector and Mr. Davis did adopt the Belknap-Milans point of view?

A. It does. I think that was the final decision, although I don't think that Mr. Carter ever did change contending for his point of view. And in that last decision it was decided to retain claim 48 of the parent patent as well as——

Q. Which patent?

A. Claim 48 of the original patent as well as the plunger shear combination.

Q. Now, at various places in this correspondence which generally relates to the Hitchcock demonstration, there is mention of a motion to dissolve to be filed by Owens in the interference proceedings in the Patent Office. Can you more or less summarize the whole situation as to just what that motion to dissolve and adding Hitchcock to it, is about?

A. Because of Mr. Carter's feeling of weakness as to the Lott parent patent, he was very anxious to agree with the contention that Hartford made in the demonstration, so that he could bind them by an admission against interest in bringing the motion to dissolve, on the ground that Hartford itself had taken that position. He felt, and expressed himself in many conferences, that it would be a great advantage to the Owens Company in agreeing that the Hartford demonstration was a correct one, so that they would be barred by their admission against interest, because he didn't think the same proof made by somebody else, would [fol. 11492] establish the fact; that it would hold them to an admission against interest; and Milans and myself, feeling that it was not a correct demonstration, and that the court was,—Judge Schoonmaker, when the Owens suit against Hamilton reached him,—was going to stick by the decision he had already made regarding Hitchcock, we didn't want to file such motion, and it was delayed, and no such motion was ever brought, although I think the Hitchcock——

Q. I wish to make this just a little clearer in this respect: at that time, in 1924, the Owens Company, as you have testified, was using plunger feeders with suspended charges, for feeding suspended charges, and was afraid of ultimate attack by Hartford on broad claims on suspended charge feeding; is that correct?

A. Yes, those claims were actually in the Patent Office at the time. We knew of them through the interference pro-

ceedings. And that was Mr. Carter's main thing that actuated him to agree that that was a correct demonstration.

Q. And the Hitchcock patent was before the Patent Office in regard to these interferences, wasn't it?

A. Yes, it was.

Q. And part of the general file?

A. Yes.

Q. Now, I want you to explain a little bit more clearly what you mean by utilizing the Hitchcock demonstration as an admission against interest on the part of Hartford.

A. Well, I thought that if we had made a demonstration [fol. 11493] of the device and submitted it to the Patent Office and claimed that that was a correct representation, we would have had great difficulty of convincing the Patent Office that we had a right to make those changes and to change the method of operation, but when the defendant——

Q. Not defendant—when Hartford, you mean?

A. Well Hartford was a defendant in the Hamilton suits. When the defendant made a demonstration, more or less with its back to the wall, that court having already held that the only prior art patent did not disclose that method, when they made such a demonstration and contended that it was the correct representation of Hitchcock, we could have used that as an admission against interest, against them, in some suit.

Q. In other words, if they persuaded the Court of the Third Circuit that the decision in the United States Glass Company suit was wrong, and that Hitchcock did fully disclose suspended charge feeding, then Owens could have used it against Hartford in the Patent Office?

A. Yes.

Q. Now, I show you Goverment's Exhibit 719, which is a letter written December 24, 1930, by you to Mr. F. G. Smith, and call your attention to the beginning of the second paragraph, which reads:

"At the time the deal was made between Hartford and Owens I felt that we had at least an even chance of sustaining the Lott patents, and I still feel that my judgment [fol. 11494] in that respect was a correct one."

Does that statement accurately express your state of mind in 1924 at the time the Hartford-Owens deal was made?

A. I think it accurately states it, but if anything it understates my state of mind somewhat. I felt that we had a

50-50 chance, because of the attitude that Mr. Carter and some of the others had taken about it, and that if it had not been for that we would have felt we had practically an open and shut case,—at least we had an even chance,—and so that expression of mine that we had at least a 50-50 chance of sustaining the Lott patents against Hartford.

Q. In the terms of the Owens-Hartford agreement of April 9, 1924, was the 50-50 principle applied?

A. It was.

Q. Will you please explain just how?

A. Mr. Owens, up until the time of his death,—which I think was December, 1923,—had contended very strongly that he believed in the Lott patents and that he was not going to accept any settlement that didn't give him at least half of the income from those patents, and give him a right to control who got a license under the patents that the Owens Company had. Mr. Blair, subsequent to Mr. Owens' death, expressed to me at various times that he did not feel like deviating from Mr. Owens' feelings in the matter, and therefore the problem came as to how we could work out details so that we could get a 50-50 division in the [fol. 11495] matter, because Hartford contended that they had to retain about $160,000 to run their business with, and that they needed the balance of their then income, to about $600,000, to carry on their development work. And we finally reached the suggestion whereby we would let them retain that $600,000 and taking their statement, subtracting the $160,000 for their administrative expense——

Q. You mean $440,000?

A. By our use of free feeders up to the extent of $440,000 worth of free feeders, so that we finally concluded that we did get—although we never did use that amount, we had the right to use free feeders up to the extent of $440,000,—and we thought that we had ultimately arrived at a 50-50 settlement.

(Recess taken.)

[fol. 11496] The Court: You may proceed.

Q. Now, I would like to clear up one thing, Mr. Belknap. You mentioned $440,000 worth of free feeders to Owens. Will you explain that term a little bit more in detail?

A. Well, the term $440,000 free feeders meant that Owens would have a right to use the feeders, and I believe forming

machines fed by feeders, up to a total of $440,000 of normal royalties before they would have to pay royalty.

Q. Now, did Owens in fact utilize that number of free feeders?

A. No; they never got up to that, no.

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Q. Now, I will refer you again to Exhibit 719, which as I said before, was a letter written by you to Goodwin Smith, December 24, 1930, and to Paragraph 2 which reads—

"At the time the deal was made between Hartford and Owens, I felt that we had at least an even chance of sustaining the Lott patents, and I still feel that my judgment in that respect was a correct one. However, as you know, the consensus of opinion was against me and it was decided [fol. 11497] for the good of the general cause that we should 'soft pedal' Lott, and in order to throw all the strength if we possibly could to the Peiler development. This resulted in the Lott patents practically remaining on the shelf for the last seven years, and our chances of sustaining them now are only a fraction of what they would have been without this long delay."

Now, my question is when the decision was made, if you can remember, to throw all possible strength to the Peiler development; and for the purpose of refreshing your recollection, I show you Government Exhibit 79, which is a memorandum of conference—a memorandum by Goodwin Smith of a conference held in New York City May 28, 1925. Will you please look at your letter and look at the memorandum?

(Witness examines exhibit.)

A. My recollection is that it was about a year subsequent to the settlement of the controversy between Hartford and Owens, and I was overruled in the matter. I still felt that we ought to establish the Lott patents, and the Hartford people naturally felt that because of the fact that their patents, if they could get them out, would be specifically on gob feeding and plug adjustments and things that were definitely related to plug feeders as distinguished from mechanisms and methods that were not disclosed as suspended charge feeding, but were essential to it as in Lott. Their influence in the matter was naturally thrown towards

that proceeding, and Owens had a controversy with Hazel—there was some question as to whether the rights which [fol. 11498] Owens had granted to Hazel extended over into the gob feeding as well as in the suction devices, and as to whether or not those rights were exclusive; and because of that controversy in fact, that if Hazel was sued on the Lott patents, that controversy would cloud the pure patent question. They decided against my wishes, and that an attempt should be made to get the Hartford patents out and suit brought on those as distinguished from Lott.

Q. Were there any other considerations discussed at the time as to why suit should be brought on the Hartford patents rather than on Lott patents?

A. Well, those two were the only ones that I recall at the present time; there may have been others.

Q. Well, you mentioned the fact that the first reason was that the Hartford patents covered the specific mechanisms in use; was that considered an advantage——

A. It is always an advantage.

Q. —in favor of bringing suit on the Hartford patents?

A. It is always an advantage to a plaintiff to have the patents taken out by the inventor who has most to do with the commercial development, to get away from the charge of paper patents. However, I never was so much concerned about that as some other patent lawyers.

Q. Now, I notice at the bottom of Page 2 of the Exhibit 79,—

"The Hazel-Atlas Glass Co. now stand a chance of breaking down the Lott patents, but their chance of breaking down any governing gob feed patents which will be issued to us are minimized, as compared with their position on the Lott patents, and it is the opinion of our attorneys [fol. 11499] that with our fundamental patents issued we stand a very excellent chance of not only sewing up Hazel-Atlas, but possibly collecting some damages, and, best of all, it will probably necessitate Hazel-Atlas taking a license under our patents, which would mean",

etc. Now, I ask you whether or not that was your point of view, or that of other attorneys?

A. That was not my point of view. I was cognizant of the force of the argument, but it wasn't my argument.

Q. And did the opinion of the other attorneys prevail?

A. It did.

Q. Now, can you state whether or not the decision to settle with Tucker & Reeves and Miller in order to issue patents had anything to do with that decision, to utilize patents for suit against Hazel?

A. Yes, that was the primary reason for getting Federal and Miller, because of the fact that they could continue to hold the Lott patents in the Patent Office a great many years.

Q. The Lott patents?

A. Or, I mean, the Peiler patents in the office for a great many years.

Q. Now, was Hazel-Atlas at that time, that is 1925, a large user of feeders, as you understood it?

A. My recollection is that they were using feeders more than they were suction.

Q. Now, I notice the first paragraph of this Exhibit 79 starts out, "The Hazel-Atlas Glass Company have flatly [fol. 11500] refused to enter into any license agreement or to pay us any option fee for the next few years until the patent situation is further developed." Was that your understanding of the situation at that time, in 1925?

A. I understood that they had refused to make any settlement. That, however, is only a matter that I knew of in general talks with the executives of the company, because shortly after that settlement was made between Hartford and Owens, I had a large number of other clients whose work had been shoved aside by me, and I started in on the trial of cases and worked on them rather completely, almost to the exclusion of my work for Owens, for a number of years.

Q. Now, did you participate in the trial of any of the so-called Hartford feeder litigations?

A. No. I took care of practically all of the other trial work of our firm in Detroit during that period.

Q. I believe you testified previously you did not have any particular part in the 1932 settlement between Hartford, Hazel and Owens?

A. I had very little to do with that.

Q. Did you, however, discuss the settlement contract in general with your brother and others?

A. I discussed it incidentally—I think I wrote one memorandum in which I pointed out—I don't know whom I wrote it to—that Owens was giving away more in that settlement because they were giving up their $440,000

worth of free feeders a year, which was a tangible asset, as against getting back some very intangible assets in the way of suction rights, and that the other things sort [fol. 11501] of washed themselves out, but in that respect I thought Owens was giving up more than Hartford.

Q. Now, I call your attention to the fact that it is already in evidence that in the settlement of the Hamilton suit, Hartford accepted a consent decree holding that the Lott patents were valid and infringed. I think that is charged in the complaint, and is clearly in evidence, and I would like to ask you whether or not that situation entered into the question of the desirability of a settlement of Hazel-Atlas' contention that it had an exclusive license under the Lott patents?

A. It must have had some influence on Hartford. It certainly had influence on Owens, because Owens had granted certain exclusive rights to Hartford which, if they were wrong in their contention, that Hazel did not have the feeder rights, then Owens was in the position of having sold the same piece of property to two different people.

Q. And Hartford, too, would be a violator of Hazel's rights in the Hazel wide-mouth field, wouldn't it?

Mr. Isseks: Your Honor, I object. It seems to me we are getting into a matter of argument. In 1924 they gave Hartford the exclusive right, and did nothing about it for more than eight years, until another situation took place, and they are now trying to explain what they did after a period of eight years, by argument only. I object to the witness being interrogated as to what he knew then was the legal situation. Whatever it was, Your Honor will have to determine.

The Court: Well, he may answer the question.

A. To the extent that they granted licenses to other [fol. 11502] people under the Owens patents, they would be a violator.

Q. Now can you tell us, very briefly, what suction rights Owens obtained by its July 1, 1932, contract with Hartford and Hazel, which you considered to be valuable to Owens?

A. Owens was essentially a suction machine manufacturing house, that is, the bulk of their ware was made by the suction process. They were on an active program of redeveloping the suction, which had become somewhat dormant in development over a period of years, and they had

two things that they gained by the 1932 contract in suction. One was they got a right from Hartford as to any mechanisms which might over-lay an Owens suction machine, and they got an option, at some arbitrated figure, to take the inventions Hartford might have on suction. They also got a complete release of the former contracts from Hazel so that they would have the right to use their suction process in making any type of ware. I can't recall whether Ball Brothers had given up their right to further suction rights on fruit jars at that time or not, but they did either at that time or sometime subsequent, so that Owens eventually got back its right to use completely its own suction inventions and to have the right to the suction inventions of Hartford which then existed, and an option on the future and the right from Hazel to have its suction inventions, which I think they had, but only in the fields that were not exclusive to Hazel.

Q. In other words, Owens, by its 1909 contract, had given Hazel exclusive rights in certain fields, and thus precluded itself from using its own suction machines in those fields [fol. 11503] and got back that right to use its suction machinery for all fields, by the July 1, 1932, settlement?

A. That is correct.

Q. Now I will direct your attention to the year 1933 and I will show you Exhibits H-5949, 5950 and 5951, and ask you if you can state what these documents are?

Mr. Wood: They are already in evidence, Your Honor.

A. H-5950 and 5951 were reports which were made by an attorney, Albert L. Krey, Washington, D. C., to W. J. Belknap, with a copy to me.

Q. May I ask the purpose of those reports?

A. Pardon me. I haven't finished yet.

Q. Excuse me. I did not mean to interrupt.

A. Then Exhibit H-5949 was a report given on the O'Neill patents. While it does not show a copy was sent to me, it was called to my attention. I might add that Krey handled interferences relating to forming machines and he was in a position somewhat similar to Mr. Milans and myself at the time we handled the feeder interferences. In other words, he had been living with that subjectmatter for a great many months—I would say a year at least—and he was asked to give a report as to what was the status of the various conflicting claims of the patents relat-

ing to forming machines, somewhat similar to what we had rendered in 1924. I, myself, knew very little about the details of the forming machines, but these were the reports that we had at the time of the forming machine [fol. 11504] deals. Some of the final reports may not have been completed, but Krey was consulted as to these reports at that time.

Q. Can you state approximately over what period of time Mr. Krey worked on those reports?

A. I don't think I can state much closer than I have. He had been working on that general subject-matter I think for at least a year, and he had been working on these reports themselves for some months. They are very complicated reports.

Q. Now, why did Owens in particular wish detailed information in respect to interferences and possible infringements in the forming machine art?

A. As I have previously testified, almost from the time I came down to Toledo, Mr. Levis began to work on me in getting off of the patent end of the business and helping him, as chief assistant, in the general matters of running the business, and I began to attend many sales meetings and factory manager meetings and that type of work, and was consulted by Mr. Levis in connection with personnel problems in the company and things that come up in trying to handle a large number of employees and keep the business running smoothly.

This forming machine was the one thing that looked like a complicated patent situation that might require considerable of my time, and these reports confirmed that. And, as I previously testified, we felt it was worth a lot to the Owens Company not to get any more royalties out of the forming machine but clean it up so they would be free [fol. 11505] from litigation in connection with the forming machines.

Q. By "free from litigation", what do you mean?

A. Well, if we wanted a Lynch machine—Lynch had a certain type machine we were using—Miller had a certain type of machine—we wanted to be free to use any machine that was on the market and not have to pay more than one royalty.

Q. Then when you speak of freedom from litigation you mean freedom from litigation brought against your company for use of machines?

A. Yes.

Q. Rather than freedom from litigation brought by your company on its own patents?

A. That is right.

Q. Now, during the year 1933 was your company also using Owens suction machinery to a substantial extent?

A. To a greater extent. At any time we had additional machines where we could make the ware to best advantage on suction machines, we naturally worked it on suction machines, and the energy of our development people was put on to that end.

Q. Now in the year 1933 what was your knowledge in respect to the patent situation on the Owens suction machine and the availability of Owens suction machines to anyone?

A. Well, we had the AE machines which had been patent free for some years, and I believe we had the AR. I may be wrong with the number, but we had one other machine. We were operating those machines in various [fol. 11506] plants, and I think the Streator plant was completely equipped with those machines on which the patents had expired.

Q. And you knew that at the time?

A. Yes.

Mr. Wood: I would like to call the Court's attention to the fact that in the government's brief on the Lynch Corporation's motion to dismiss, the government states:

"As part of a larger scheme to control and limit competition in the production and sale of glassware the forming machine agreement is also unlawful".

The present testimony has been directed to that charge, which I don't think appears specifically in the Complaint.

Q. Now in these forming machine deals of 1933, will you please state just what your purpose and responsibility were in the making of the deals?

A. Well, at that time I was directly active in the patent and legal matters of the company, and it was my duty to see that the patent rights which we obtained were such as to give us the right to use the suction developments of the people we made deals with. In other words, we were interested in getting the right to use the suction rights of both Miller and Lynch, and we also—I think it was in '33—had run into a conflict with the O'Neill Company in con-

nection with the development of the stationary pot, in which we found we were infringing their patent, and we had great hopes of a new small suction machine which could be used [fol. 11507] with a stationary pot as distinguished from the larger and more expensive rotating pot. It was my duty to see that we got those rights so we would not be stopped, after we put several million dollars into the development of the machine on the stationary pot combination, from using it.

Q. That is, your company wished immunity so far as its own suction developments were concerned and obtained them by various contracts made in '33?

A. I think the attempt was made since the beginning of the '32 contracts right down on through until we completed the last deal with Hartford, the present contracts, in 1935, in which we got a non-exclusive suction right as distinguished from the option which we previously held.

Q. Did the contracts which the Owens Company entered into in 1933, in effect augment the Owens immunity in respect to its suction machinery and also insure Owens unmolested use of forming machines in its factories?

* * * * * * *

[fol. 11508] A. My opinion is that it did. It certainly was our object and I believe we accomplished it.

Q. Now I will ask you when you became executive vice-president of the Owens-Illinois Glass Company?

A. In 1935. I think it was July.

Q. July, 1935, I believe the record shows?

A. Yes.

Q. Did you participate in negotiations with the Hartford-Empire Company leading up to the contracts of September 30 and October 1, 1935?

A. I did.

Q. Now will you tell us—I will put it this way: Were you, yourself, in favor of those contracts of September 20th and October 1st, 1935?

A. I was very much so.

Q. Will you tell us why?

A. By 1935 I had gotten into the business end of the company where Mr. Levis and myself discussed the broad problems of management and both the questions of the manufacturing and sale, and I had gotten away from the patent end of it to a material extent. We often discussed

the theory that while patents were advantageous and nec-
[fol. 11509] essary to some new development, so as you get your money back after you once put it in to a large manufacturing company, they sometimes become handicaps in that you get a situation in which your manufacturing sales people are apt to rely on; and the old Owens Company started out originally as a licensing company and then it became a licensing company with some manufacturing, and then it became a manufacturing company with some licensing, and the desire was to get the company into a strictly manufacturing company.

[fol. 11510] Q. Now, I show you exhibit 777, and I will ask you to read the last paragraph; will you read it aloud, please? I would like it in the record at this point.

A. (Reading):

"I am concerned about and feel that our income from royalty will continue to decline, for I am not at all optimistic as to the outcome of the Hartford-Empire Company's litigation, and am arranging to make our future plans so that we can look at our business solely as a manufacturing operation, without much regard for the royalty income we are now receiving."

Q. That is a report from Mr. Levis to the board of directors; meeting held in Toledo, January 20, 1931?

A. Yes.

Q. I show you Government's Exhibit 629, and call your attention to paragraph near the bottom of page 2. This report, by the way, is by Mr. Lufkin, the chief engineer:

"We must, however, do better than that if we are to acquire the position in the industry for which we are aiming, and this would mean, among other things, that our Owens costs will have to be much lower than feeder costs."

I will ask you whether or not, from the point of view of corporate policy between 1931,—the date of Mr. Levis' report,—and 1935, there was any connection between these two recommendations?

A. I can only testify as to beginning November, 1932, that certainly was a definite policy between that time and
[fol. 11511] 1935.

Q. Now will you explain just what the connection was between the two, from the point of view of company policy, —that is, between the development of suction machinery

and Mr. Levis' expression of the desire to be independent of income from Hartford royalties?

A. Well, when we gave up the Hartford royalty, or as we did, by contract, or if it had decreased in any way, it was the policy to increase our own manufacturing sufficiently to offset any loss that we might have from that income.

Q. I will put it this way: from 1931,—or, rather, from 1932, when you came there,—to 1935, was your company following the suggestion of the Lufkin report, Exhibit 629, and endeavoring to get down the cost of production on the Owens suction machine?

A. That has been true of the company ever since I have been connected with it.

Q. Was there any particular effort made during that period?

A. Well, during the period that I have been with it, we have spent millions of dollars trying to improve our suction process and make it more efficient. I don't think we would be in business today if we hadn't done so.

Q. Well, by 1935 can you state whether or not there was any particular improvement in the production which Owens could achieve with its suction process?

A. Yes, we stepped up the production of the machines. I couldn't give the exact percentages, but some of them would run as high as 35 or 40 per cent.

[fol. 11512] Q. You mean of the Owens suction machines?

A. Yes.

Q. Now, after you signed the new agreements with Hartford September 30 and October 1, 1935, did the company do anything in order to compensate for the royalty income which it had previously received from Hartford?

Mr. Isseks: You mean other than the two and a half million dollars they got?

Mr. Wood: Well, that is not anything they did.

Mr. Isseks: Well, they got it. It has something to do when you get money. You mean did they do anything affirmatively besides the money?

Q. Did they do anything affirmatively? That is correct.

A. Yes, we developed our own suction machines and all the other facilities throughout our plants, and I think probably more than anything else we developed our personnel along the line of a good football team, that we would all

work together. I might add, Mr. Wood, that coming from an attorney to a manufacturer, that I had reached the conclusion by 1935 that a manufacturing company is not a matter of machines, or patents, or money: it is a matter of personnel.

Q. Well, after October 1, 1935, did the Owens-Illinois Glass Company institute an extensive program of plant rehabilitation?

A. Yes, we spent, I couldn't say offhand the amount of money, but it would be somewhere around twenty-five or thirty million dollars,—the books would show that, I [fol. 11513] couldn't give it exactly.

Q. Did you have to re-finance, to borrow some of the money?

A. Yes, we have sold some stock to our stockholders and we also borrowed some fifteen million dollars.

Q. What was the purpose of this plant rehabilitation?

A. To take care of the increased efficiencies that we had created in our suction machines, and the greater speeds there were in the producing of ware, and it required greater warehouses and greater facilities than we would otherwise have required.

Q. You also provided greater facilities for those furnaces that used the Hartford feeders, too, didn't you?

A. We did.

Q. Can you state approximately what percentage of the Owens output is manufactured on Owens suction machinery and what percentage on feeder-former units?

A. It is something over 80 per cent on the suction machines, and 19 and a fraction per cent on the feeders.

Q. That is for what year, Mr. Belknap?

A. That is for the last year, 1941.

Q. And have the figures been somewhere near that consistently from 1935 through 1941?

A. Yes, although I think we have been increasing our production on suction machines some small percentages as we went along.

Q. Did this plant rehabilitation result in the lowering of production costs for the Owens-Illinois Glass Company?

A. Yes.

[fol. 11514] Q. And was that one of the purposes of the plant rehabilitation?

A. It certainly was.

Mr. Wood: You may examine.

Mr. Parham: Your Honor, I wish to have the witness identify three exhibits.

Direct-examination.

By Mr. Parham:

Q. Mr. Belknap, when you were in charge of the patent matters at the Owens Company you had a gentleman working for you named Mr. Hoge, did you not?

A. Yes.

Q. Do you know, also, who a Mr. Kinker was, who had something to do with suction machines?

A. Mr. Kinker, as I recall it, was the chief engineer for the O'Neill Company.

Q. And he afterwards worked for the Owens Company?

A. For the Owens Company.

[fol. 11515] Q. Mr. Belknap, I show you what purports to be a copy of a letter from S. F. Parham to yourself, dated February 6, 1933, marked Exhibit H-6068, and also a letter from yourself to Mr. Parham, which is the answer thereto, H-6069. Can you identify those as correspondence you had with Mr. Parham at the time?

A. I can identify the H-6069 as a letter which I wrote, and since it refers to the report of February 6, 1933, which is H-6068, I assume I got that report. I know I got some report before I wrote the answer, and I assume that is the report which I received.

Q. I now show you a memorandum, apparently from Mr. Parham to you, dated April 13, 1933, marked H-6070, and ask you if you can in any way identify that memorandum or the incident to which it refers?

A. Yes. There was an interference in which Mr. Kinker was involved when he was with the O'Neill Company, and the question came up as to whether or not he had actually built a machine prior to this filing date.

The Court: What is the date of that?

Mr. Parham: The date is April 13th, 1933.

Q. About the time of this memorandum, the Owens Company acquired the suction rights of O'Neill Company, did it not—or a little later?

A. Some time in the early part of 1933. The contract would have to show. I don't remember the exact time.

Q. And among those assets you took over this application of Mr. Kinker?

[fol. 11516] A. Correct.

Q. I now show you five letters which are marked H-6071 to H-6075, inclusive, and purport to be correspondence between Mr. Hobson, of the Hartford-Empire Company, Parham, of the Hartford-Empire Company, and Mr. Hoge of your company, and I will ask you if you can identify the Hoge signatures, and whether you were acquainted with that general correspondence?

A. Exhibits Nos. H-6072, H-6073, and H-6075 are on the letterhead of the Owens-Illinois Glass Company, and that is the signature of J. R. Hoge, of the Patent and License Department, to whom I turned over the handling of these matters.

Q. I call your particular attention to the document of June 28, 1933, the last of the letters, in which Mr. Hoge reports to Parham that Mr. Belknap has approved the above suggested procedure, therein referring to the decision on the part of the owner of the Kinker application to no further prosecute and permit the priority to go to the Peiler applications. Do you recall that you approved that decision?

A. I don't recall that I specifically approved it, but I have no reason to question the statement in the letter to the effect that I did.

Q. Do you recall, Mr. Belknap, that some time prior to 1933, there had been a suit brought by the Hartford-Empire Company against the Carr-Lowrey Glass Company involving the alleged infringement of the Cox patent by the Knox-O'Neill Machine used by that company?

A. I have a very, very vague recollection of it.

Q. Well, I call your attention to Page 6 of the document marked Exhibit H-6068, the matter under "Forehearth Situation", and ask you if it refreshes your recollection, [fols. 11517-11518] that you were informed as to that situation, and the fact that the license had been given to the O'Neill Company for the use of the mechanism described?

A. To be frank with you, I don't.

Q. You do not recall it?

A. I do not recall it.

Mr. Parham: Now, your Honor, I wish to offer the documents which have been identified, Exhibits H-6068 to H-6075, inclusive, and I shall identify the exhibits specifically.

* * * * * * *

The Court: Well, they will be admitted under the stipulation.

* * * * * * *

[fol. 11519] Q. Mr. Belknap, do you know whether or not Mr. O'Neill, after his sale of assets to the Owens Company, immediately went into business or whether or not he went to Florida for some years?

A. I think O'Neill was in Florida a great deal of the time. My recollection is that he went to Florida and he did not start his Canadian Company until some time after that.

Mr. Parham: That is all. I would like to withdraw these and substitute photostats.

The Court: That may be done.

Mr. Wood: We have supplied certain files to the government to look through, and they have taken certain documents from the files relating to the Hitchcock matter. I understand they are going to offer certain documents into evidence, and I would like to offer into evidence at this time the remainer of the file so that it is complete. I don't intend to read anything from here, but I would like to put them in at this time, so if the government wishes to cross examine the witness about anything in here they may do so, rather than have me go back to it later on.

Mr. Isseks: We do not intend to ask about any documents [fol. 11520] which counsel is now handing to the Clerk. We intend to offer only four small pieces of paper out of that file.

Mr. Wood: I will put them in. There is nothing I want to read. They can be given one number and the rest a, b, c, and d.

Mr. Isseks: I think the stenographer ought to take the exhibits so the record will show the various dates of the documents, and the writer and the recipient.

Mr. Wall: Will they be announced to counsel, too?

Mr. Isseks: You can read them off right now if you want to. Of course, they will be in the record. You can read it tonight.

Mr. Wood: Let's give the first one a number, O-6076-A. I offer in evidence Exhibit O-6076-A through to 6076-Q, inclusive, and the stenographer can copy into the record the identification of the documents so we don't take the time now to do it.

The Court: They may be admitted.

The exhibits above referred to are as follows:

Exhibit O-6076-A is a letter from Henry W. Carter to F. P. Davis, January 19, 1924.

Exhibit O-6076-B is a telegram from Henry W. Carter to W. J. Belknap, January 30, 1924.

Exhibit O-6076-C is a letter from W. J. Belknap to Frank P. Davis, January 30, 1924.

Exhibit O-6076-D is a letter from W. J. Belknap to Frank [fol. 11521] P. Davis, February 7, 1924.

Exhibit O-6076-E is a letter from Henry W. Carter to F. P. Davis, February 11, 1924.

Exhibit O-6076-F is a letter from F. P. Davis to W. J. Belknap, February 11, 1924.

Exhibit O-6076-G is a letter from Henry W. Carter to F. P. Davis, February 14, 1924.

Exhibit O-6076-H is a letter from C. T. Milans to W. J. Belknap, February 14, 1924.

Exhibit O-6076-I is a letter from F. P. Davis to W. J. Belknap, February 27, 1924.

Exhibit O-6076-J is a letter from F. P. Davis to Henry W. Carter, February 29, 1924.

Exhibit O-6076-K is a letter from Henry W. Carter to F. P. Davis, March 8, 1924.

Exhibit O-6076-L is a letter from Edward Rector to W. J. Belknap, March 11, 1924.

Exhibit O-6076-M is a letter from Henry W. Carter to Rector, Hibben, Davis and Macauley, March 13, 1924.

Exhibit O-6076-N is a letter from F. P. Davis to W. J. Belknap, March 20, 1924.

Exhibit O-6076-O is a letter from F. P. Davis to W. J. Belknap, April 2, 1924.

Exhibit O-6076-P is a letter from C. T. Milans to W. J. Belknap, March 26, 1924.

Exhibit O-6076-Q is a letter from Henry W. Carter to F. P. Davis, April 2, 1924.

The Court: Any further questions by defendants? If not, proceed with the cross examination.

[fol. 11522] Cross-examination.

By Mr. Isseks:

Q. Mr. Belknap, this file that has been marked O-6076-A is a file of your former law firm from the period January 1st, 1924, to a date in April, 1924, isn't it?

A. Yes.

Q. Your former firm kept the file for the same matter in the year 1923, did it not?

A. I would assume so but I would have to find out.

Q. I understand from the conversation we had yesterday you are going to try to get that file for us so we can examine that file?

A. Yes.

Q. Was there a separate file in connection with negotiations which you were having with Mr. Dorsey beginning the early part of 1923 until the actual contract was executed?

A. I would not think so. I would think outside of telegrams regarding dates there was very little correspondence. It was mostly by conference. I don't recall there was any separate file kept on that.

Q. Mostly your reports to your principals, the Owens executives, was all?

A. Yes.

Q. You did not make any written reports as to the conversations you had with Mr. Dorsey and the Hartford executives so far as you recall?

A. I could not say I did not. I don't recall any I made.

Q. If there are any they would be in the files of your former firm?

A. Yes, sir.

[fol. 11523] Mr. Isseks: If there are any we would like to have them.

The Court: They may be produced, if there are any.

Q. Did you keep a diary or memorandum book during this period?

A. No, I kept no diary.

Q. Now, you were shown Exhibit 6057 and interrogated this morning about pages 11 and 12. Now, as to the Conclusion A, B and C, those are the Lott patents that issued prior to the date of the memorandum which is fixed by you some time in the early part of 1923?

A. Yes, that is right.

Q. Then you said patents issued as to some of these other matters under A and under B, that is A relates to patents you thought might run to Owens, and B relates to patents which you thought might run to Hartford, and C relates to patents which you thought might run to Federal. Now, as

to the categories other than A, B and C, the patents that did issue issued subsequent to April, 1924, did they not?

A. I think that is correct.

Q. As a matter of fact, two of the patents that issued to Hartford, they were issued subsequent to the deal made by Hartford on one hand and with Tucker, Reeves & Beatty and with Miller?

A. As to any of the broad subject matter on Page 2, I point out specifically so far as any broad scope on feeders neither Federal nor Hartford had secured any broad patents.

Q. My question was broader than that. Referring to your prognostication on Page 12 as to what Hartford would get, [fol. 11524] it is a fact neither of the categories A to G that were issued to Hartford came subsequent to some time in 1925 after the deals of Hartford and Owens on one hand, and Tucker, Reeves & Beatty on the other?

A. I think that is true. It certainly is true, so far as any broad claims are concerned.

Q. You were shown Government's Exhibit 613 by counsel for Owens, which is a memorandum from Mr. Carter to Mr. Blair dated January 28, 1924. Mr. Belknap, did you see that memorandum contemporaneous with the time it was executed; in other words, shortly after January 28, 1924?

A. I might have. There is a probability that Mr. Carter sent me a copy of it, but I haven't been able to locate any such copy, and I have no independent recollection. But as far as Mr. Carter's contention, I am aware of what his contentions were.

Q. At that time Mr. Carter was in charge of the Patent Division of the Owens Bottle Company, was he not?

A. Yes. He was.

Q. He was the man that outside patent counsel had to contact at Owens?

A. He was the contact man at Owens, yes.

Q. You knew either from having received a copy of the memorandum or from conversations with Mr. Carter and others of the position he took in this memorandum, Government's Exhibit 613?

A. I did.

Q. In other words, you knew he took the position as indicated on the bottom of Page 1, "Our observers, including [fol. 11525] Mr. Cramer and Mr. Soubier, will file a complete technical report in due course, but in the mean-

time, would record that we were unable to find any serious fault either with the apparatus as being a correct exemplification of the Hitchcock patent, or with the character of the mold charges which it produced. It seemed to be an eminently fair demonstration, and will unquestionably be accepted by the Court as such." You knew that was his position at least?

A. I knew that was his position and I knew my brother who was there also disagreed with him.

Q. You also knew Mr. Cramer filed a report in which he substantiated the facts of Mr. Carter?

A. I doubt if I ever had a copy of that report.

Q. You do not question that there is such a report?

A. No.

Q. Mr. Soubier wrote a report in which he agreed with Mr. Cramer and Mr. Carter?

A. You would have to ask Mr. Soubier as to that. I have no recollection of either report. I do not deny it undoubtedly is correct.

Q. I don't know. I am trying to find out from you. I wasn't there.

A. I don't know either.

Q. I don't seem to be able to get the Soubier report. You don't remember what it was?

A. No.

Q. Then Mr. Carter in this memorandum states that——

Mr. Wood: On that particular point we have not been able to find the Soubier report, but there is a reference [fol. 11526] to Soubier's opinion in one of those letters I put in, and that letter states Mr. Soubier had no criticism of the cam, or something to that effect. That is the nearest I have been able to go in getting his position.

Q. You also knew Mr. Carter reported a conversation with Mr. Dorsey at the time of the demonstration as indicated on Page 2 of this memorandum, Government's Exhibit 613, and perhaps I should direct your attention under the heading, "Suspended Gob Interferences", the third heading. Mr. Carter says,

"The importance of this demonstration by Hartford of the operativeness of Hitchcock is perhaps even more striking with respect to pending interference issues than with respect to the pending litigation on the Lott patents. For

apparently, these issues would read word for word upon the operation of the apparatus as demonstrated."

Did you know that Mr. Carter took that position, too?

A. Yes. We argued it.

Q. Do you understand that Mr. Carter further said,

"In other words, the production of this demonstration in court by Hartford will probably put an end to the recently declared interferences in which the suspended gob forms the basis of the claim. And, of course, the other side know this. In fact, I asked the direct question of Dorsey at the demonstration as soon as I saw that it was a success —'What does this leave of our suspended gob interferences?' He shrugged his shoulders and replied that it [fol. 11527] was because of this question that he would consider it wise that the facts of this demonstration be not allowed to get out in view of the possibility of our getting together."

Was that conversation brought to your attention at the time, sir?

A. I have no recollection of it.

Q. You heard since the trial of this case of the secrets of the charnel-house, have you not?

A. I heard somebody speak of that remark.

Q. Did Mr. Carter at the time tell you it was wise to keep this demonstration a secret of the charnel-house?

A. No.

Q. You don't have any recollection of it at all?

A. No.

Q. Then Mr. Carter goes on to say, "I subsequently told Dorsey that while I was expressing only my own personal judgment and was not in position to speak authoritatively, I could see nothing to it myself, but that we would be obliged to add the Hitchcock patents to our motion for the dissolution of these interferences on the ground that they were anticipated by the prior art." Mr. Carter brought that to your attention, did he not?

A. He brought the question of bringing motions to dissolve to our attention.

Q. You were interrogated about that, to the effect of motions to dissolve. A motion to dissolve if made by Owens based on the Hitchcock demonstration would have resulted, if agreed to by the Patent Office, in throwing out all the

pending Peiler applications on suspended charge feeders, is that so?

[fol. 11528] A. Well, depending on what testimony was given. They might have convinced the Patent Office and they might not have.

Q. I mean if your people would have made a motion to produce this demonstration and would have claimed that was an admission against interest because made by Hartford?

A. Yes. If the Patent Office would have believed them.

Q. That is what I mean.

Mr. Wood: I object to questions as to what would have happened because nobody knows what would have happened.

Mr. Isseks: I will withdraw the question.

Q. What was the opinion of Mr. Carter as expressed to you regarding the effect of this motion to dissolve if made and the Hartford demonstration was produced?

A. There wasn't any question that Mr. Carter's contention was that that demonstration if called to the attention of the Patent Office and if proper proof of it was made he felt it would knock out the gob-feed interferences.

Q. And it would knock out the art, too; it would make the art open to the public based on prior anticipation?

A. That is a different thing. Our Lott patents were separate from that, but so far as this interference was concerned——

Q. That is what I mean.

A. That was his contention.

Q. In other words, there would not have been any competent control if his contention was followed by the Patent Office?

A. You mean patent control by Hartford. It would not have affected our control.

[fol. 11529] Q. I understand now it was the Hartford position, was it not, that if Hitchcock was a true demonstration, a correct demonstration, and shown in the suit by Owens on the Lott patents in Pittsburgh, then Owens would have lost this suit brought by them under the Lott patents?

A. I don't think they were any too confident about that. That may have been their contention, but they certainly would not have been on any too sure ground.

Q. That was the position they took?

A. That is the position I understood they took,—that Hitchcock was the anticipation of the Lott retarding claim.

Q. And that was the reason for the demonstration, wasn't it, to show the operativeness of this claimed prior art?

A. I assume they expected to make proof of that demonstration in that case.

Q. And that was the controversy between you and Mr. Milans on the one hand, and Messrs. Winter, Browne and Mr. Carter on the other hand?

A. As I testified before, I don't recall Mr. Browne ever coming into the thing except at the last.

Q. Well, we will offer a piece of paper. I will take Carter and one of the others.

A. Well, I think you can add Davis.

Q. Davis was on their side?

A. I think Carter finally got him on his side. Then the matter was finally put up to the head of the firm, Mr. Rector, [fol. 11530] and it was finally decided that the Belknap-Milans viewpoint should prevail.

Q. But that was the viewpoint of Messrs. Carter, Davis and Winter, that if this demonstration was shown at Pittsburgh in connection with the Owens-Lott suit against Hartford, that it might be successful and result in Owens' losing the suit?

A. As to the method patent.

Q. That is what I understand, yes. Of course, that matter was never determined, because you settled the lawsuit, didn't you?

A. That is right.

Q. So that no one knows, right now, what the actual result would have been in that suit?

A. In all patent cases I ever tried, I don't think anybody ever knew the result until the judge gave his conclusion.

Q. I understand, but I am trying to point out what we allege in the complaint: namely, that that matter was never brought to the attention of the judge in Pittsburgh, the actual demonstration made by Hartford?

A. No, no more than Milans' and my contention on the other side was brought to his attention.

Q. I understand. The controversy never was submitted to the court?

A. No.

Q. Now, there was, you say, a difference of opinion between the various gentlemen, and your counsel has offered only the view of you and your brother.

(No response.)

[fol. 11531] Mr. Isseks: I would like to read Your Honor at this time the view of Mr. Winter, who was Pittsburgh counsel in this particular case, a document which has been stipulated as genuine, letter dated March 24, 1924, from Mr. Winter to Mr. Davis, with copies to Messrs. Carter and Belknap. It doesn't identify which one.

Mr. Wood: May I ask the purpose? I don't understand that we are trying this old controversy which was not tried in '24. We have already admitted the dispute and differences of opinion. Unless we are going to re-try the question I don't see what point there is in putting in more of the minority opinion.

Mr. Isseks: The point is Your Honor would like to have before you all the facts at the time. Our theory is,—and we have alleged it,—that as to the Hitchcock demonstration it was only until this actual lawsuit that the public, through a record, can find out what the actual facts were. Here is another eminent lawyer who is in the controversy, counsel of record in Pittsburgh, who thought that the demonstration was an accurate demonstration. Mr. Cramer thought so, and the other gentleman who was present, Mr. Davis, apparently thought so. We would like to put this in to show what they thought of the demonstration. We are not trying to prove prior art.

* * * * * * *

[fol. 11532] The Court: Well, it may be received as the opinion only of Mr. Winter.

Mr. Wood: That is entirely satisfactory.

Mr. Isseks: And brought to the attention of the Owens [fol. 11533] Bottle Company.

The Court: And brought to their attention.

Mr. Isseks: Thank you very much. I offer it as Government's Exhibit 1994.

The Court: It may be admitted.

(Government's Exhibit 1994 read by Mr. Lewis.)

(Adjournment taken to 1:45 p.m. of the same day.)

[fol. 11534] (At 1:45 p. m., Friday, January 16, 1942, the trial was resumed.)

The Court: Proceed.

Mr. Isseks: Your Honor, we have a few more of these documents that were taken from that file, and of the four others—rather, the four that we took, I would like to only read two. I will offer four in evidence, and then have my associate, Mr. Carter, read the first and the last.

The first one, which I will have marked as Government's Exhibit 1995, is a letter dated January 27, 1924, from Mr. Henry W. Carter to Mr. W. J. Belknap.

The next one, which is Government's Exhibit 1996, is a letter dated February 7, 1924, from Mr. Carter to Rector, Hibben, Davis & Macauley, attention Mr. Davis.

The third, which I am having marked Government's Exhibit 1997, is a letter dated February 8, 1924, from Mr. F. P. Davis to Mr. Carter; and the fourth, which I am having marked Government's Exhibit 1998, is a letter dated April 1, 1924, from Mr. W. J. Belknap to Mr. Frank Parker Davis.

The Court: Four letters?

Mr. Isseks: Yes, Your Honor.

The Court: Without objection, they will be admitted.

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[fol. 11535] Mr. Isseks: Your Honor, the government would like to offer, as Government's Exhibit 1999, a letter from Mr. Carter to Mr. Davis, dated February 28, 1924, which comments on Owens Exhibit 6060.

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The Court: Without objection, it will be admitted.

(Mr. Kramer reads Government's Exhibit 1999.)

Cross-examination.

By Mr. Isseks (Continued):

Q. Now, Mr. Belknap, you started these negotiations, did [fol. 11536] you not, with the Hartford people, sometime in 1923, which finally led to the agreement in '24?

A. Whenever it was, around July of '23.

Q. And you had a conference, did you not, with Mr. F. Goodwin Smith and others, at Albany, N. Y., on one occasion in 1923?

A. I think when I was driving the family down to Maine I stopped over and spent some time with Mr. Smith.

Q. And at that time you discussed the question of the future licensing policy of Hartford, did you not?

A. I wouldn't have any recollection as to what we discussed.

Q. Well, see if I can refresh your recollection. I show you Government's Exhibit 1960, which is a letter dated September 10, 1923, from Mr. F. Goodwin Smith to Mr. Dorsey. In the last paragraph of the first page, reference is made to a conference with you, which starts as follows, in this exhibit:

"Belknap stated at Albany that he felt his people needed some protection as to the future licensing policy, so that if we should sell out at any time the purchasers would not start in to license every 'Tom, Dick and Harry', no matter who they were or what was their relation in the trade. He also felt that if a new group should ever get control of the policies and management of this company, they might, for stock purposes, start to license highly undesirable people."

Now, my question is if you recall whether what Mr. Smith has in substance set forth in this letter, is what you told [fol. 11537] him at Albany?

A. Your Exhibit 1960 refreshes my memory, and I think in general that expresses what I stated to him. As I previously testified, Mr. Owens was very insistent that if he was going to license under his patents, he was going to have control as to who got licenses under his patents.

Mr. Isseks: Thank you very much.

Q. Now, you testified on examination by counsel for Owens with regard to conferences, at which it was decided to sort of emphasize Peiler rather than Lott, after the 1924 contracts; or am I not summarizing it correctly?

A. Well, you are summarizing the fact that I testified that that was the decision, that it was against my views.

Q. I understand; but there was such a decision?

A. There was such a decision.

Q. And it took place sometime, I think you testified, in 1925?

A. I would think that would be about the time.

Q. Now later on, weren't there conferences in which you participated, when it was decided not to push certain claims of Tucker & Reeves, in order to give the Peiler patents a better effect as far as the litigation was concerned?

A. No, that is not quite a clear statement of it. There were those conferences with reference to the issuance of the Tucker, Reeves & Beatty patents, or applications, with claims which might conflict with Hartford, and it was a question as to whether or not they could carry dates back [fol. 11538] of Tucker & Reeves. If they could, they would be entitled to the broad subject matter, and if they failed in showing that, Tucker & Reeves & Beatty were entitled to the broader interpretation.

Q. Did you attend a conference in regard to those matters in March of 1932 at Mr. Dorsey's office, at which were present besides yourself Messrs. Dorsey, Carter, W. J. Belknap, C. T. Milans, Parham, Bates, and R. D. Brown?

A. Well, if you call my attention specifically to the conference I might recall.

Q. I didn't give you a date. The date is March 15th. I didn't give it to you, but I said March. Do you remember any conference about the subject matter?

A. Yes, sir.

Q. Do you remember a conference at which it was decided to drop the so-called shear height application of Tucker & Reeves because of the possible bad effect on the Peiler shear-height patent which was involved in certain litigation in Ohio?

A. I wouldn't remember it, but I wouldn't question that we might have.

Q. Do you remember at that conference you and Mr. Bates took the position that no serious harm would result from issuing the patent?

A. No, that was a very complicated set of questions, and I couldn't pick out a recollection of it.

Q. That's alright, I am trying to refresh your recollection. Look at Government Exhibit 1739, which shows that you were present at a conference at Mr. Dorsey's office in [fol. 11539] March, 1932, and you will note the last paragraph of the first page, where it is stated:

"It was decided to drop this Shear Height application"—

referring to Tucker & Reeves—

"first, because of possible bad effect on the broader T. & R. claims, and second, because of the possible bad effect on the Peiler Shear Height Patent No. 1,589,304, which is now involved in the Ohio litigation."

A. That is what this memo states.

Q. And it says that you disagreed?

A. Apparently Mr. Milans and myself and Mr. Bates disagreed.

Q. That is right; I am trying to see if you have any recollection of the matter?

A. No.

Q. Did they take your views, or did they take the view of those who were the other way—to quote Mr. Wood, the majority opinion or the prevailing opinion?

A. I wouldn't know without looking it up, sir.

Q. You have no recollection, alright, sir. Now, you testified with regard to certain conferences, or rather, limited conferences in connection with the 1932 revision of the Owens-Hartford contract?

A. Yes.

Q. Did you participate also in the negotiations with Hazel-Atlas in 1932?

A. I may have been in some one conference, but I have no recollection of it. I do have a recollection that I wrote [fol. 11540] some memo in connection with the advantages that would accrue, and the disadvantages that would accrue, to the Owens Company in making the 1932 deal.

Q. Now, you recall do you not, that in connection with the 1932 deal, the proposed license which had originally been exclusive from Hartford to Owens was to be changed to a non-exclusive license?

Mr. Wood: Haven't you stated that in reverse, Mr. Isseks?

Mr. Isseks: I am sorry—I meant to say from Owens to Hartford. Thank you very much.

A. Yes. I think that was one of the changes that was made.

Q. And do you remember the reason given for changing it from an exclusive license from Owens to Hartford to non-exclusive?

A. Not in the absence of seeing the memorandum, I wouldn't recollect.

Q. Wasn't one of the reasons that it was to guard against government interference, if it was exclusive?

A. It might well have been. Certainly there would be no question about government interference on non-exclusive licensing.

Q. Well, I am trying to get your recollection at tne time. I am not trying to get into a controversy or discussion of the relative merits of the lawsuit.

A. Well, I say it might very well have been.

Q. To refresh your recollection, I show you now Government Exhibit 1778, and I will ask you first if that is the memorandum to which you had reference when you testified on direct examination this morning, and which you re- [fol. 11541] ferred to about two or three minutes ago?

A. Yes.

Q. And in that memorandum you state in Paragraph No. 2—well, I think I will read the second full paragraph:

"As far as the changes which are a detriment or a loss to either party, they are the same in three respects, but different in one respect, as follows"—

that is referring to the proposed contract. Now I am going to skip the first, and take the second:

"Hartford takes a non-exclusive license in place of an exclusive license, but this is a matter which is done simply to guard against government interference and is nothing which Owens-Illinois itself cares for."

Now, that was stated, was it not, as a reason for the change at that time?

A. I think that is probably true.

Q. And who was the one that stated it, that it was being done, "simply to guard against government interference"?

A. I don't recall that I was quoting anyone.

Q. Well, somebody told you that—you didn't make it up?

A. No, but I wouldn't recall who told me that.

Q. Well, first of all, somebody told you—isn't that clear? You were in the negotiations, you said?

A. Oh, undoubtedly somebody told me.

Mr. Isseks: Alright; that is fine.

Q. Now, you were representing Owens as a lawyer at that time, were you not—you weren't an executive?

A. I was representing Owens as a patent lawyer at that time.

Q. That is right. Now, did somebody from Owens tell you that?

[fol. 11542] A. I have no recollection as to who told me, Mr. Isseks.

Q. Well, who among the Owens people were you dealing with in connection with the memorandum that you prepared?

A. The only two people that I know that I contacted at all in that connection were Mr. William E. Levis and Mr. Lloyd T. Williams.

Mr. Isseks: Thank you very much.

Q. Now, when you were here the last time, Sir, I asked you about a document, which is Government's Exhibit 322, and which has a notation on the top of it which has since been identified by Mr. Safford, and states on the top, "Handed to us by C. B. B. at Hartford", with the date on it, July 18, 1933, and Mr. Safford testified, as I recall it—I may be wrong—that the notation would indicate to him that you handed him that piece of paper on or about July 18, 1933. Now, I think when you were here last your recollection wasn't clear, and as I recall it, you weren't feeling in the best of health?

A. No, I have looked at that exhibit——

Q. Since then?

A. —since then, and I still haven't any better recollection of it than I had at that time.

Q. You do not deny, however, that you may have given it to him?

A. No.

Q. Just your recollection is a complete blank on it?

A. Yes, sir.

Q. Now, in that connection I show you another document marked yesterday as Hartford Exhibit 6054, which is similar in set-up, and I ask you if you have any recollection [fol. 11543] as to ever having seen that document before? That, too, on the original has the date on it, up in the right hand corner, July 18, 1933—at least in my copy it has.

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[fol. 11544] A. No, I have no such recollection. I notice that in 2 (B) is No. 12 Machine and Parts, which I assume

must be some Hartford machine. But I have no recollection of it.

Mr. Isseks: Thank you very much.

Q. Now, you were interrogated this morning about the arrangement in 1933 which resulted in your company obtaining certain rights on suction machines?

A. Yes, sir.

Q. And you participated in those negotiations, did you not, beginning in the early part of 1933, with various parties?

A. I probably was in it to some small extent. I was in on some of the contract end of it.

Q. You also were in on some of the negotiations—you heard Mr. Brown testify yesterday, didn't you—you were sitting in the courtroom?

A. Yes.

Q. And you heard the testimony, and the exhibits read, in regard to your being present at some meetings?

A. Yes.

Q. And your telephone conversation with him?

A. Yes.

Q. Now, prior to that time, didn't you have some conversation with Mr. Levis with regard to a proposed big program relating to the forming machine business?

[fol. 11545] A. I have tried to think of my connection with the forming machine business, and I have only one or two recollections, which I would be very glad to state.

Q. Yes, sir.

A. Mr. Levis had apparently talked with Mr. Werbe at White Sulphur Springs about the Lynch Company, about the settlement, and Lynch was insistent that the Lynch Corporation should become the manufacturing company for manufacturing not only their machines but also Hardford-Empire Company's, and our suction machines, and it later came up that there was a great reluctance on the part both of our people and the Hartford people to letting Lynch become the manufacturing company because of the fact that, as I recall it, Hartford had some connection with the Hartford Machinery Company in which Mister—or the widow of Mr. Ernest Smith was one of the chief stockholders, and they didn't feel that they could ditch that company, and our people didn't feel that they could ditch their engineering department, and the question of Lynch becoming the

overall manufacturing company had broken down. I recall that Lynch said he wouldn't make a deal with Hartford which left Hartford open to take all of the forming machine business, because Hartford, having the sale of the feeders, would have the first access to the customer, and as a result would sell him the forming machine as well as the feeder. And I made a suggestion which I think is the only suggestion, or certainly the only one I have been able to recall, that after—in order to protect Lynch from that situation, that after Hartford had made more than forty percent of the forming machines, that Lynch was to have [fol. 11546] a free license to make not only their forming machines but also Hartford's. That is the best recollection I have got of my connection with the forming machine business.

Mr. Isseks: Thank you very much.

[fol. 11547] Q. I would like to ask you a few more questions which, I think, will help bring out your recollection in a little clearer focus. In that connection I show you letter dated June 16, 1933, from Mr. F. Goodwin Smith to you, Government's Exhibit 1750, and I direct your attention to the second page, third full paragraph, where Mr. Goodwin Smith says:

"I want to have Bill Levis feel that we are seriously interested in the BIG program, that we will not procrastinate about it, but I can see where it will be absolutely necessary for us to take more time than he will think necessary.

"The situation with the Special Machinery alone is one that is rather tender and complicated and one in which the Bank, as trustee, will play a very important part."

Now, those two paragraphs refer to what you just testified about, the suggestion about putting all the forming machine business in the hands of Lynch, which fell down because of the difficulty with the stockholders of the Hartford Special Machinery Company.

Mr. Wall: I object to that except as showing this witness' state of mind. It certainly is not proper as a representation of Hartford's.

Mr. Isseks: I want his understanding.

A. I understand that is what Lynch demanded as the means of settling it: that he become the manufacturing

company. The "Big" program that is talked of there is [fol. 11548] Mr. Levis' unit idea that he wanted the thing, when it was cleaned up, so that when you paid one fee you got a complete right to use all the mechanism, and not have to pay royalties on different parts of it.

Q. But the "Big" program of these two paragraphs referred to the subject-matter of your testimony a few moments ago, the Lynch complication?

A. Yes. Except where the word "Big" is used there, I am explaining there is an additional fact to which I testified.

Q. Thank you very much.

Mr. Wall: That, again, is not to construe Mr. Smith's state of mind but only Mr. Belknap's.

Mr. Isseks: I agree, Your Honor, unquestionably that is so.

Q. Do you recall that in July, 1933, you had certain conversations with Mr. Bridges and Mr. McMurtrie in Toledo, Ohio, in regard to trying to work out some arrangement whereby the Lynch people would be satisfied with regard to the quantum of production by the Hartford people?

A. I remember having a conference on that subject, but whether it was in Toledo or New York I couldn't say.

Q. See if I can refresh your recollection. I show you Hartford Exhibit 6053, which refers in the first paragraph to a telegram which you sent Mr. Brown, and then refers to a telephone conversation which you had with Mr. Brown in which, according to Mr. Brown, you say that you and Levis,—and I am quoting,—"have had quite a long talk with Bridges and McMurtrie in Toledo yesterday and [fol. 11549] Bridges has talked with Werbe by long distance phone." Does that refresh your recollection?

A. It refreshes my recollection the conference was in Toledo and not in New York.

Q. Then the memorandum goes on to say:

"C.B. also said that he and Levis have cooked up a scheme that he thinks may get by with the Lynch people and he wants to talk with you and me about it as soon as possible",

and so forth. Does that refresh your recollection that you had a conversation with Mr. Brown with regard to some arrangement?

A. I had the conference with Mr. Brown—you mean by telephone——

Q. Telephone, this is only referring to the telephone conversation.

A. Yes, I apparently had the telephone conversation. I don't agree with Mr. Brown's language that I "cooked up a scheme", because I don't think I ever used such an expression.

Q. He didn't say you used the words. You thought of something to work it out?

A. I thought of a solution which would protect Lynch from the point that he was up against, that if Hartford had first access to the customer, they might take all his business away from him; and the conclusion I refer to is the one I testified about.

Q. You note this memorandum, Hartford Exhibit H-6053, [fol. 11550] indicates at the point I am showing you, "C. B. will be in New York all day Monday" and then goes on to suggest perhaps you can work out a conference. Do you recall having a conference in New York with Mr. F. Goodwin Smith on the Monday following July 15, 1933, at which you talked about this arrangement of quantum production by Hartford?

A. I recall having talked to Mr. Smith, whether in New York or whether I went up to Hartford, I wouldn't say.

Q. See if I can refresh your recollection. I now show you Government's Exhibit 321, which is a telegram dated July 19, 1933, which is from Mr. Bridges to Mr. Werbe and says:

"Collins phoned that Belknap obtain very satisfactory agreement with Smith."

Does that refresh your recollection that about this time you did have a conversation with Mr. Smith at which he agreed to some arrangement?

A. I said I had a conference with him but I didn't know whether it was in New York or Hartford.

Q. I will show you another document and see if I can refresh your recollection. I show you Hartford Exhibit 6048, second page, a longhand note by Mr. Brown which says: "F. G. S. July 18, N. Y. City. Lynch to build excess Hartford-Empire machines if we go above 40 per cent of machines in use or sales in one year." I think that is what it says; it is very difficult to read, being in longhand. I am

trying to see if you can remember the conference was in New York, because the notation says, "F. G. S. July 18, [fol. 11551] New York City". I will ask you, do you remember talking to Mr. Smith on an occasion when he agreed to the proposed arrangement of their producing 40 per cent of a certain type of forming machines and Lynch the other 60 per cent?

A. I don't think that is what we finally got down to. I don't think that represents my suggestion. My suggestion was that Lynch should have a free license after Hartford had built 40 per cent of the machines; Lynch should have a free license to build Hartford machines as well as Lynch machines.

Q. Did you have a conference with Mr. F. Goodwin Smith in New York in the middle of July, 1933, at which he agreed to something?

A. I recall having a conference with him. I have a faint recollection it may have been in Hartford rather than New York. It may have been at either one of the two places.

Q. Wherever it was, what did he agree to? What is your best recollection of the arrangement you had with him which Mr. Bridges thought was satisfactory?

A. He thought that there was some possible solution of the difference between himself and the Lynch Corporation on that basis.

Q. What is the basis? I am sorry.

A. Well, on the basis that I talked,—after Hartford had made 40 per cent, then Lynch would have a free license to make their feeders. But I think they wouldn't agree specifically that they make the feeders. I think that ended up [fol. 11552] some other—if I could see the contract I could tell you what that ended up in.

Q. You said "feeders"; you mean "formers"?

A. I mean formers. Pardon me.

Q. Do you recall this conference in New York on July 27, 1933, at which were present Messrs. Levis, yourself, F. Goodwin Smith, your brother, W. J., Mr. Eldred, Mr. Amory Houghton, Mr. Parham and Mr. Brown?—You heard the testimony yesterday?

A. I heard Mr. Brown's testimony. If he made a note I was at the conference, I undoubtedly was. I couldn't pick the date out of thin air.

Q. Do you have a recollection that you were at a conference with a group of gentlemen at which this matter of

an arrangement to be worked out with Lynch and Hartford and Owens and Miller was discussed?

A. I have a recollection of having attended some conference of that type, but just what the discussions were I cannot recall.

Q. You don't remember the detail?

A. No.

Q. I show you Hartford Exhibit 6055, and I direct your attention particularly to that portion of the memorandum on the first page, where Mr. Brown purports to set forth during the conference what you stated. It says:

"CBB. LC's fear is that they are now the big people in forming machine business, but unless Hartford-Empire gives them future rights, LC may be squeezed out. Thinks [fol. 11553] LC will accept suggestion that if Hartford-Empire's output becomes greater than 40 per cent of combined output of LC and HE then LC can, at Hartford-Empire's option, build the excess, or (2) get from Hartford-Empire the manufacturing profit on excess or LC can cancel with no license for future improvements except H & T."

A. Except H. & T., Headley & Thompson.

Q. Does that, in substance, set forth your present recollection of what you said at this conference at which these gentlemen were present?

A. I have a very definite recollection of having made a suggestion that after they got up to 40% of the combined output that Hartford-Empire should have the—after they got up to 40% of the combined output, then that Lynch Corporation should have the right to build Hartford's formers, I think, specifically, the I. S. machine.

Q. You don't question, though, what Colonel Brown wrote at the time?

A. No.

Q. Now, wasn't it the fact that the Owens interest in the matter was to bring together into one hand, the licensing of feeder and forming machines?

A. I think that that is correct, and that I wrote a memorandum to that effect, that we were anxious to get it cleaned up so that when you got a feeder license you got a right to use whatever forming machine you could get, without being subject to another lawsuit or interference.

[fol. 11554] Q. And it was because of that interest on the part of Owens that the arrangement was made whereby Lynch Corporation purchased the Miller Machine & Mold Works, and Lynch, in turn, took a license from Hartford under the arrangement worked out?

A. No, I think the Lynch purchase of the Miller Machine & Mold was an entirely separate situation. The only advantage that we got out that was the fact that if Lynch had a license he would not accept a license unless he felt he could continue the same volume of business that he had. When we got that settlement, then we could get any of those machines without the possibility of suit or interference. The manufacturer is in an entirely different position than the licensor. He must keep his machines running and cannot just shut them down. If he has an injunction preventing him from operating the machines, he is in serious difficulty.

Q. You are not saying, though, that the arrangement for acquiring Miller was not part of the arrangement between Hartford and Lynch?

Mr. Wall: I object to that.

The Court: He may answer.

A. No, I am not saying that it was. I don't know whether that was something that Hartford was insisting on; it is my recollection it was something Lynch was insisting on.

Q. Don't you recall attending a conference with Mr. Safford in New York in August, 1933, at which the details of the proposed deal of forming machines was worked out [fol. 11555] between you and Mr. Safford?

A. I wouldn't think so. I would rather think Mr. Safford and I didn't work them out.

Q. I show you a memorandum written by Mr. Safford, Government's Exhibit 326, dated August 14, 1933, where he states:

"The following is a resume of the discussion between Safford and C. B. Belknap in New York at the Biltmore, on August 10th, regarding the amounts and rights passing as regards the Lynch deal.

"1. Hartford to pay $100,000, equal to half, for the H&T applications.

"2. Hartford to pay $100,000 or $125,000 for combined Miller present feeder rights and Lynch's present and future feeder rights.

"3. Owens to pay $100,000, equal to half, for H&T applications, they to get license to themselves and subsidiaries regardless of forming machine agreement of July 1, 1932.

"4. Owens to pay for Lynch suction inventions, including Miller present and future, $125,000 at least and $150,000 if H-E doesn't contribute.

"5. Lynch to sell additional stock to account for balance of Miller purchase.

"$450,000 total will be paid for Miller.

"Lynch will have to raise at least $200,000." Does that refresh your recollection of attending a conference with Mr. Safford in New York at the Biltmore Hotel on or about [fol. 11556] August 10, 1933?

A. It refreshes my recollection that we had a conference about it, but not that it was something I worked out or we worked out with Safford. That would be something, certainly, somebody besides the attorney for Hartford would work out.

Q. Were you only acting as attorney in the matter at that time?

A. No, I was acting as an officer of Owens-Illinois.

Q. Didn't you discuss with Mr. Safford at the time—he was secretary of the company—the means by which the finances would be raised for working out the transactions involving Miller, Lynch, Hartford and Owens?

A. I may have discussed them, but they were things that certainly had been discussed with somebody else prior.

Q. I don't question that. I am asking you whether you discussed them at the time.

A. Certainly, I said that we had a discussion, but your original question was whether that wasn't something that Mr. Safford and I worked out.

Q. Did you discuss it at the time, before the final deal went through?

A. I presume we did. I haven't any reason to question Mr. Safford's memorandum.

Q. I show you memorandum you wrote, dated October 9, 1933, to Mr. Levis, Government's Exhibit 745, and I direct your attention to the last paragraph, in which you state:

"In order to round out the forming machine situation, the Lynch Corporation purchased the Miller Machine & Mold Works and also took a license from Hartford whereby

[fol. 11557] the users of Hartford-Empire's feeder equipment could have the use of the Lynch and Miller forming machines without the payment of additional royalties. Such an arrangement not only removes the possibility of complicated litigation relating to forming machines, but it brings together into one hand the licensing of feeders and forming machines. I believe this straightening out of the forming machine situation is one of the most important advances made in the industry, and it is a long step towards a unit system of licensing whereby Hartford-Empire can furnish the manufacturer with a complete outfit from furnace to stacker at the cost of a single license fee."

Does that set forth, in substance, the reasons why the Owens Company was interested in the various arrangements made with regard to the forming machine business in the summer of 1933?

A. As I previously testified when I was called by the government, this memorandum of October 9, 1933, expresses my views at the time I wrote it.

Q. Also expresses the views of your company?

A. The whole document. I don't think you could pick one paragraph out of the document.

Q. The whole document does?

A. Yes.

Q. You don't divorce the last paragraph from the whole document?

[fol. 11558] A. No, it is part of the whole.

Q. It is one of the reasons. At that time, by 1933, your company—and by "your company" I mean the Owens-Illinois Glass Company—was entitled to one-third of the divisible income of Hartford-Empire, was it not: the divisible income being defined as all royalties on feeders and formers in excess of $850,000?

A. That is correct.

Q. Now, as part of the arrangement in 1933, your company also received certain rights in the suction field, did it not?

A. It did.

Q. And that was another reason why your company was interested in working out the arrangement?

A. It was.

Q. And in that connection your company received certain suction machine rights that the Lynch Corporation and the Miller Machine & Mold Works had?

A. Yes.

Q. And that was also set forth by you in memorandum dated October 9, 1933, to Mr. Levis, Government's Exhibit 746?

A. Yes, sir.

Q. Where you state in the first paragraph:

"In the purchase of the O'Neill assets and the suction rights of Lynch (which includes those secured by Lynch from the Miller Machine & Mold Works), the company has substantially rounded out its program for protection in the United States of its suction machine rights. These acquisi-
[fol. 11559] tions, together with the contract which we have to take over Hartford-Empire's suction machine developments, enables this company to proceed, for all practical purposes, with a free hand in its suction machine developments. Moreover, the patents which the company has developed and secured will protect its important developments from being duplicated by others."

Those are some of the considerations, among others, as set forth in that memorandum, which motivated your company in working out the forming machine arrangement in 1933?

A. I think that is correct.

[fol. 11560] Q. In connection with the suction machine matter I want to show you Hartford's Exhibit 8055, where Mr. Brown sets forth what he then at the conference understood Mr. Levis wanted. You will notice Item 2 there you said WL wants (2) Keep out future inventions——

Mr. Wall: Improvements, isn't it?

Mr. Isseks: Improvements, thank you.

(Counsel look at exhibit.)

Q. "Keep out future inventions, Hartford-Empire to Lynch and Lynch to Hartford-Empire. OI will give LC OI future rights, feeder-fed, in return for agreement by Lynch Corporation not to build suction machine and to give OI rights under future LC suction inventions." Was that the substance that Owens was interested in at that

time to make sure that the Lynch Corporation would not build suction machines?

A. No. I don't think so. I think we did take an exclusive license under suction which we later released to non-exclusive.

Q. You took that from Lynch?

A. Yes.

Q. So far as you know, has Lynch at any time since the 1933 agreement made any suction machines for anybody?

A. Not that I know of. I would have no way of knowing what he makes.

Q. As far as you know, Mr. Belknap, is anybody today using the suction process for making any kind of glass containers outside of your company?

A. So far as I know, they are not. If they had a desire to they certainly could.

[fol. 11561] Q. But they are not in fact?

A. No. So far as I know. There may be somebody but I don't know it.

Q. You are the vice chairman of the Owens-Illinois Glass Company?

A. Yes. I think it is pretty reasonable I would know if they did.

Q. As vice-chairman of the Owens-Illinois Glass Company, if anybody was using the suction machine you would know about it; it would be called to your attention by somebody, would it not?

Mr. Wood: We object.

Mr. Isseks: He already answered it. He answered it in the previous question.

Q. That is a fair question?

A. Yes. Relatively in a couple of short months we would know about it.

Q. You testified in connection with the 1935 contract Owens gave up the royalties from Hartford,—I think the words you used, gave up Hartford royalties?

A. Yes.

Q. But Owens received two and one-half million dollars in cash, payable over a period of time?

A. We got two and one-half million dollars for our future inventions relating to feeders and former rights, and Hartford got the right to grant licenses to anybody without consent of Owens.

Q. Up to that time, 1935, they were getting the same right, one-third of the divisible income?

Yes.

Q. Your company took two and one-half million dollars in cash and no longer had that right?

A. Yes.

[fol. 11562] Q. Was that two and one-half million dollars spread over your books over a period of time or taken in as any common income?

A. That would be up to the accounting people.

Q. You paid no attention to that?

A. No. I would not know.

Q. How did you compute the two and one-half million dollars?

A. What?

Q. How did you arrive at that figure? You were vice-president at that time, weren't you?

A. I was vice-president and I was very active in the negotiations. We did not compute the two and one-half other than that was the best we could get.

Q. Wasn't it worked out on any basis compared to prior amounts you received?

A. No. If it were it would have been about six or eight million dollars.

Q. You took less?

A. We took an entirely independent sum.

Q. Now, you testified about the fact that the company has in the last few years been developing more and more the suction process?

A. Yes.

Q. Approximately how much of your business is on suction and how much on Hartford?

A. I think I testified it was eighty and a fraction per cent on suction, and nineteen and a fraction per cent on feeder.

Q. Does that include your wholly-owned subsidiary on the Pacific Coast?

A. Yes.

[fol. 11563] Q. Since 1935 you have been paying more and more royalties to Hartford, have you not, in dollars; do you want to look at the figures?

A. Without looking at them I would think that we have because everybody's business has been growing.

Q. And yours has, of course, considerably, has it not?

A. Yes. Less probably than the others, but it has been growing.

Q. Your volume this year is greater than it was last year, in containers, much greater?

A. So is everybody else's.

Q. I am asking about yours?

A. I think our percentage is less.

Q. Was your volume of business greater in 1941 than it was in 1940?

A. Certainly.

Q. Was it greater in 1940 than it was in 1939?

A. Yes.

Q. And greater in 1939 than it was in 1938?

A. We will get it to a fluctuating period in there somewhere. I think '39 was greater than '38.

Q. Yes, I understand. '38 may not have been greater than '37?

A. Without getting into the records——

Q. I am not asking that. In the last three years there has been an increase since '38, substantially?

A. Yes.

Q. And so far as you can recall, you have been paying more royalties dollar-wise than you have prior thereto?

A. Yes.

Q. You built that new plant in Waco, Texas?

[fol. 11564] A. As I recall it. We got it started. I don't say we built one.

Q. You have something down there; are you making glass containers?

A. No.

Q. Have you got to that stage yet?

A. No.

Q. What kind of equipment are you putting in, suction or Hartford feeders?

A. I would not know without looking it up.

Q. What is your best understanding?

A. I would not make a guess one way or the other.

Q. I would like to find out. Will you have your counsel let the Court know and we will take that as a statement of fact?

A. Yes.

Mr. Wood: Mr. Isseks, they are using both.

Mr. Isseks: They are using both?

Mr. Wood: They are going to use both. I should put it in the future tense.

Q. So far as you know, has Hartford licensed anybody else on Hartford suction inventions at any time since 1924 other than your company?

A. Not as far as I know.

Q. They haven't?

A. No.

Q. As far as you know, has your company licensed anybody on Owens feeder patents since 1920?

* * * * * * *

[fol. 11565] Q. As far as you know, has Owens licensed anybody on Owens feeder patents at any time since 1924?

A. As far as I know they have not and they have not been requested.

Q. As far as you know has Owens licensed anybody on Owens suction patents since 1924 other than Hartford and Hazel-Atlas?

A. I don't think they ever licensed Hartford on suction patents.

Q. Then did you license anybody other than Hazel-Atlas on suction?

A. Since 1924 there was the outstanding license to Ball.

Q. Which expired?

A. Which expired, and I think there may be one or two customers that had suction machines. The old Maryland Glass Company used a few suction machines, and I think the Heinz Company had suction machines. Whether any of those were being operated, I don't know.

Q. Are there any pending license agreements, so far as you know, from the Owens Company to anybody other than Hazel-Atlas on suction machines existing today?

A. No.

[fol. 11566] Q. Only except the one?

A. Except the one I mentioned.

Q. To Ball Brothers that expired?

A. And there may be one to Heinz.

Q. Still in existence?

A. Mr. Williams would know whether it is still in existence or not.

Mr. Isseks: Let's ask Mr. Williams.

Mr. Williams: I think it expired. I am not sure.

A. I think it expired.

Mr. Wood: I investigated and found the Heinz machines were the old type on which all patents expired. So I assume the license expired, too.

Q. I show you Government's Exhibit 35, which is a memorandum enclosed in a letter from Knox Smith to J. C. Blair dated April 21, 1922. The letter is dated April 22, 1922, in which at Paragraph 5 Mr. Knox Smith says,—memorandum sent to Mr. Blair, "Owens is not to go out and license its forms of gob feed in competition with the HF feed. In principle HF is to be the gob feed concern, and Owens the suction concern." I will ask you whether that was brought to your attention in 1922 or 1923 or 1924?

A. No, it was not. In 1922 I was acting and continuing to act up until the summer of 1923 solely in connection with the interference matters, and I was not in the negotiation angle that I recall until Dorsey and I had that conversation in July, 1923.

Q. Was it brought to you in connection with conversations you had with Mr. Dorsey or Mr. Smith in 1923 or '4?

A. No.

[fol. 11567] Q. Was the subject matter brought up, namely, that Hartford would be the gob feed concern, and the Owens would be the suction feed concern?

A. No.

Q. I will show you another document to see if it was brought to your attention. I will show you a letter dated January 29, 1932, Exhibit 631, from Mr. Carter, as vice-president, Owens-Illinois Glass Company, to F. Goodwin Smith, with copy to Mr. Boeschenstein, Bernard, and Soubier. Notation, "Shown to Mr. Phillips before mailing," and with a note to Mr. Soubier at the top. I will ask you whether this letter was called to your attention, and I direct your attention particularly to the second full paragraph on Page 2, where Mr. Carter then says, "For you will readily see, Goodwin, that the difficulties of our relationships in respect to this particular matter are inherent in our basic agreement. In recognizing your dominant interest in the feeder field, you will recall that we were very careful to insist on our own dominant position in the suction field, and I do not think I am giving away any secret when I say that the interests which control this company, both those which were originally attached to the old Owens

organization and those which have come into control through the Illinois Glass merger, are still decidedly jealous of anything that looks towards an invasion of this field by others, including yourselves." Was that brought to your attention in 1932 and 1933?

A. No. In January of 1932 it was not called to my attention and I have no—there was no particular reason why it should be. I was practicing law in Detroit at [fol. 11568] that time.

Q. I will ask one more question and I think I am through. I hope I am. Was it called to your attention at any time from 1924 until the present time that the Owens people in 1924, when they made the agreement with Hartford were, as Mr. Carter says in Exhibit 631, very careful to insist in our own dominant position in the suction field at the time, as he says, when Owens recognized Hartford's dominant interest in the feeder field?

(Question read.)

A. No. Other than the fact that the 1924 agreement excluded any rights relating to suction.

Mr. Isseks: No further questions.

The Court: Any redirect; any questions on redirect examination?

Mr. Wood: Yes.

The Court: Proceed.

Redirect examination.

By Mr. Wood:

Q. Now, in the 1924 contract between Owens and Hartford there was a paragraph which defined licensed inventions, was there not?

A. There was.

Q. Now, was there a great deal of work done on the drafting of that paragraph to make the definition of licensed inventions very meticulously precise?

A. There was, because the Owens Company did not want to grant any license with reference to its suction development, and it was difficult to find a phrase which would exclude other patented devices.

[fol. 11569] Q. Was there any other arrangement in 1924 or at any other time, as far as you know, between Hartford

and Owens that in any way limited, that is up until July 1st, 1932, that in any way limited Hartford's activity in the suction field?

A. No.

Q. Now, as a legal matter between 1924 and 1932, could Owens grant any license on feeders and formers?

A. No, it could not. It granted an exclusive license to Hartford, with the right to sub-license.

Q. After July 1st, 1932, when the Owens license to Hartford became non-exclusive, as a practical matter was Owens in a position to grant any feeder license?

A. No. I testified when I was on the stand before there would not anybody take a license from Owens because in order to operate they had to get a license from Hartford, and they were not going to pay royalties to two people when they could get the same rights from one person.

Q. Now, do you know whether or not along about May 5th, 1933, that is the date on which Owens took over certain O'Neill assets, there were any O'Neill suction machines in use in the country?

A. I think there may have been, but I haven't any personal knowledge about it.

Q. I think you testified on cross that you probably would know of the use of such machines, if it existed?

A. Well, there may have been some O'Neill machines that were put out prior to that time which were still in existence, and I would not know who were using those machines.

Q. Did Owens by suit interfere with the free use of any O'Neill machines that were outstanding at the [fol. 11570] time?

A. No.

Q. Now, you said something about receiving two and one-half million, whereas if things would have been worked out on a financial basis it would have been, I think you said, eight or nine million, or something, and I will ask you whether or not the treasurer of your company, Mr. Phillips, approved of that on October 1st, 1935, from a financial point of view?

A. He certainly did not from a financial point of view. He may have voted for it as a director due to the fact he went along with the majority, but he was violently opposed to our accepting any such sum.

Q. Will you explain his reasons in just a little more detail?

A. He tried to argue that if we were pro rating the contemplated annual payments, even discounting the interest, that as treasurer he thought it was a very poor deal for us, because even if there was no future growth we were giving up many, many millions of dollars, and Mr. Levis and I took the position we were not trying to pro rate the contract, we were merely making a deal to sell future inventions and cancelling the old contract.

Q. That is, it was a matter of company policy rather than finance of the period that you were concerned with?

A. Yes.

Q. Now, prior to the summer of 1933 did the Lynch Corporation, as far as you know, ever manufacture and sell any suction machines?

A. Not to my knowledge.

Q. Now, we speak of Lynch suction rights. Will you explain just how Lynch inventions might be applicable to [fol. 11571] Owens suction machinery?

A. You have got in the glass making machinery certain transfer devices, certain knockout arms, certain movements and timing mechanisms that are interchangeable or might be interchangeable between feeder-fed machine and the suction fed machines, and we got immunity from being annoyed in case they came out with a timing mechanism or some other thing that was better than what we previously had if we adopted it on our machines.

Q. Now, in several of the documents in evidence there is reference to the unit system. I would like to ask whether or not the unit system has ever been put into effect?

A. No.

Q. Was Owens' interest as far as you knew the same as Hartford's interest through the year 1933 in respect to these forming machine negotiations?

A. Well, ours differed because we were a manufacturing company and the interferences I testified to with the manufacturers' operation is a serious thing, whereas in a licensing company they might be able to change their machine. We were buying machines from different people, whereas Hartford as a licensing company had control of what machines they were putting out.

Q. That is, Hartford's point of view was that of a manufacturer and licensor of machinery, and Owens' point of view was that of a user of machinery?

A. Yes.

Q. On this 40 percent—60 percent suggestion which you say you made in the summer of 1933, in the Hartford-Lynch difficulties, I would like to know whether or not that 40-60 [fol. 11572] percent arrangement was to be applied to patented machinery or unpatented machinery?

A. I assume any arrangement was with reference to patented machinery and not to unpatented machinery.

Q. That is, it applied only to patented machinery?

A. Yes, that is my understanding of all of those contracts.

Mr. Wood: That is all.

Mr. Isseks: I have one more question.

Recross examination,

By Mr. Isseks:

Q. Reference was made to Phillips' opposition to this two and one-half million dollars. Did he write a memorandum?

A. No, I think it was oral argument.

Mr. Isseks: No further questions.

Mr. Wall: I would like to raise one question which occurs by reason of the cross examination of Mr. Belknap. I would like the issue clarified for us because we are coming to the end of the case. In speaking of the admissibility of the letter of March 24th, 1924, from Mr. Winter to Mr. Davis, Mr. Isseks said, "Our theory is,—and we have alleged it—that as to the Hitchcock demonstration it was only until this actual lawsuit that the public, through a record, can find out what the actual facts were".

Our understanding of this issue, until that occurred, was as he stated on Page 6928 of the record, at a time when we were trying to show those facts and he was successfully objecting.

He said, "We don't claim, Your Honor, we don't allege—and the proof is not offered—this 613 is not offered for the [fol. 11573] purpose of showing that he perpetrated a fraud in perpetuity, because it was brought out in the Hazel-Atlas case that they had this demonstration. We complain in our complaint, and we claim here, that they failed to advise the District Judge in the case of Owens against Hartford and Hamilton, that they did not make the disclosure there."

Now, depending on which alternative counsel takes and will adhere to will depend somewhat our course as to further proof.

Mr. Isseks: Our position is, Government's Exhibit 613 and the various memoranda put in by counsel for Owens and for Hartford and for the government were never disclosed at any time until this case, namely, that Hartford made a demonstration to show the operativeness of the Hitchcock device,—that the Owens people considered operative. That the memorandum with regard to it was never shown anywhere at any time. That is my understanding of the facts. Now they claim and they put in proof here, Your Honor, indirectly by putting in those various records, that at some subsequent time it was brought out that there was such a demonstration. We are not offering any evidence to contradict there was such proof later on. We claim the various documents we put in for the first time show their state of mind and failure to disclose it to the Court in Pittsburgh when they made that consent decree. That is our position. I don't think there is any difference in either of the statements, but if there is I would prefer to take the earlier position.

Mr. Wall: The two are diametrically opposed. Which [fol. 11574] contention he may make will influence our position as to further offers of evidence as to what was testified to in various lawsuits. If Mr. Isseks is saying only this, and I mean henceforth only this, that these exhibits were not paraded around in different suits, that is one thing. If he is now taking a position contrary to his earlier statement, then we want to know it now.

Mr. Isseks: Our position is not only were these memoranda not disclosed but the actual facts shown by the memoranda were not disclosed, namely, Mr. Carter, Mr. Cramer, and the Hartford people took the position it was an accurate demonstration, and if it were disclosed in the suit in Pittsburgh or in the Patent Office it would result in no control whatsoever. Their state of mind is what we are offering it for. We are not offering it for the fact Hitchcock was operative or inoperative. We are offering it for the fact they had a certain state of mind at that time, and that is why we are showing that fact, and that state of mind was not disclosed in 1924 to the Pittsburgh court.

Mr. Wall: I am trying to get at the varying states of mind of the Government exhibited by these quotations. Does the government now adhere to the statement made to Your Honor when it was trying to get an objection sustained, or does it adhere to what happened later?

Mr. Isseks: I would adhere to the statement made earlier, if there is any difference.

Mr. Wall: Then I move to strike out the statement that I have read from the transcript this morning as follows:

[fols. 11575-11577] "Our theory is,—and we have alleged it—that as to the Hitchcock demonstration, it was only until this actual lawsuit that the public, through a record, can find out what the actual facts were".

Mr. Isseks: Your Honor, I understand statements of counsel are never evidence in the case.

Mr. Wall: That is the only source we have for the charges we are supposed to meet and they change so often, Your Honor, that we are put at a very serious disadvantage.

Mr. Isseks: I will adhere to the earlier statement I made. Your Honor can have it stricken out. I understand statements of counsel are not evidence at any time except when we make a stipulation.

. . . . . .

[fol. 11578] The Court: Call the next witness.

Thereupon, U. E. Bowes, called as a witness on behalf of the defendant, Owens-Illinois Company, and having been heretofore duly sworn, testified as follows:

Direct examination.

By Mr. Middleton:

Q. Your name is U. E. Bowes?

A. That is right.

Q. You testified briefly on a previous occasion in this case, Mr. Bowes?

A. I did, yes, sir.

Q. At that time, as I recall it, we did not ask anything concerning your qualifications, and I would like to inquire very briefly—you got your college education at Syracuse University?

A. Chiefly, yes, sir.

Q. And there you majored in what?

A. Science.

Q. And I believe your graduation was interrupted right at the end, by the war?

A. That is right; I am not a graduate.

Q. And after your war service, did you take some work in Paris?

A. I took a half-year of chemistry at the University of Paris.

Q. You spent the entire time in the field of chemistry?

A. Practically all of it, and a little English.

[fol. 11579] Q. What did you do at the close of the war when you came back to America?

A. I was employed for the first half-year by a chemical company, and in 1924 entered the employ of the Berney-Bond Glass Company at Clarion, Pennsylvania.

Q. While you were with the chemical company, did your position involve advising with regard to chemical matters?

A. That is right.

Q. As technical adviser?

A. That is right.

Q. And in 1924 you became connected with the Berney-Bond Company, you say; in what capacity, please?

A. My first assignment was to make a study of their business and operation and originate suggestions for its improvement and at the end of the first six months my designation was changed to director of manufacture.

Q. And how long did you hold that title and perform those duties?

A. Until that company was absorbed by the Owens-Illinois Glass Company, about July 1, 1930.

Q. When the Owens-Illinois Company took over the factory of Berney-Bond in 1930, what position were you given with the Owens-Illinois?

A. Well, I received some temporary assignments over the first month or so, and about the end of September I was given general supervision of laboratories and glass-making operations.

Q. Is that in the field of research, that we now speak of as research?

[fol. 11580] A. It included the research, and also the technical control of glass operations at the various factories.

Q. And how long have you had supervision of the glass-making operations?

A. Until August 1, 1935, I maintained direct supervision.

Q. And was your position changed in August of 1935?

A. My designation was—the position was changed as of that time, or my designation became the "director of re-

search", and my time devoted more directly to research, and I surrendered certain contacts with the day-to-day operations which I had previously had.

Q. And what is your present title with Owens?

A. Director of Research.

Q. You have held that since the first of August, 1935?

A. That is right.

Q. So that the position of director of research was created as a formal position in 1935, was it?

A. That is right.

Q. And a recognized position?

A. That is right.

Q. And prior to that time your work in research had not entitled you to enjoy a sort of distinct title in the organization?

A. Prior to that time it had been, we might say, a part-time operation, in that my activities were partially directed toward current manufacturing activity.

Q. Was there an increase in the activities in research at the end of 1935, about the time you became director of research?

[fol. 11581] A. Yes, about the time I came here, we built a new laboratory,—in the latter part of '35—a new laboratory in Toledo, and began plans, then, for the establishment of what we now designate as our general research laboratory.

Q. When you say you came here, you mean to Toledo?

A. I came to Toledo, having formerly been located at Alton, Illinois.

Q. What time did this new research laboratory in Toledo begin to function?

A. Well, the building was occupied in early 1936 with part of our research activities, a part designated as the "packing research division", and what we designate as our "general research laboratory" was in process of formation during that year, and started functioning there in the early months of 1937; it involved, too, the transfer here of some personnel formerly located at Alton, Illinois.

Q. Now, of what technical societies are you a member, Mr. Bowes?

A. The American Institute of Chemical Engineers; American Chemical Society; American Ceramic Society;

Society of Glass Technology of England—those are the major ones.

Q. American societies for the advancement of science?

A. Yes.

Q. Now are any of these what we might say rather exclusive in their membership, regarding the carrying on of projects and having a certain type of experience before you can become a member?

A. Well, the Institute of Chemical Engineers is a smaller organization, one of the requisites being that you shall [fol. 11582] have been in active and immediate charge of some research and development activity for a period of three years or longer.

Q. In addition to being director of research of Owens-Illinois Glass Company, are you on the planning committee?

A. I am.

Q. How many members constitute the planning committee of Owens?

A. Seven, I believe.

Q. Who are the other members associated with you on that committee?

A. Mr. W. E. Levis, chairman; Mr. C. B. Belknap, vice-chairman; Mr. J. P. Levis, president; Mr. R. H. Barnard; Mr. John McNerney, secretary and treasurer, and Mr. C. E. McGowan, vice-president and comptroller, and myself. I think that is all.

Q. How long a period have you been on the planning committee?

A. I believe since about 1937 or '8.

A. Will you state briefly what that planning committee does?

A. Well, it is a committee of the management which formulates overall policies for the management of the business, and it also—it is the committee having the maximum appropriating authority within the management, and passes on to the board, recommendations involving matters requiring action by the board.

Q. In that position, are you put in touch with all of the operations of the company?

A. Reasonably so.

[fol. 11583] Q. Would you give us, for the record, Mr. Bowes, a very brief description of industrial research, which is your field, I understand?

A. Our concept of industrial research is that it is the systematic procuring of facts by investigation and experimentation, and development which is in industry usually associated with it, and implies the application of those facts to commercial purposes, the purpose usually being an improvement in some existing product or process, or perhaps an entirely new product or process.

Q. Well, is this sometimes referred to as "applied research"?

A. The portion that I have designated as development might with equal accuracy be called "applied research".

Q. Now, what place in modern industry has research and development?

Mr. Apsey: We object, Your Honor. It seems that this line of questioning is directed to getting into the question of research and development, which Your Honor ruled was irrelevant to the issues in this case, in connection with Hartford. I don't see that it is any more relevant in connection with Owens. It seems to me it is taking the time of the Court unduly, on a collateral matter.

The Court: What is the point that counsel has in mind?

Mr. Middleton: Well, I had not understood, Your Honor, that there was any ruling that research and development is irrelevant to the issues of this case.

[fol. 11584] The Court: Well, what particular point of the complaint are you reaching?

Mr. Middleton: Quite a number of them, Your Honor.

The Court: Well, which one in particular?

Mr. Middleton: I will say this, Your Honor: the testimony will not be lengthy, but it was designed to show Your Honor the manner in which the company operates and the manner in which it serves the public, the manner in which it develops its business to the state of efficiency which it has, which enables it to sell its product at the prices it does and to serve the public with the class of ware that it does.

Now, we have——

Mr. Apsey: If any such material is relevant, Your Honor, we will stipulate it. We do not think any such evidence is relevant to the issues of this case, however.

Mr. Middleton: Paragraph 188 of the complaint says, that by reason of the conspiracy, monopoly and combination in the restraint of trade hereinbefore alleged—and

that, Your Honor, includes almost every act that Owens-Illinois had ever done in the past—is charged——

The Court: No, I don't agree to that.

Mr. Middleton: —as being in restraint of trade. And the control and domination of the business, Hartford and Owens, through patents on glass-making machinery and their licensing policy, and as a result of the license agreements hereinbefore referred to, and the artificially high and [fol. 11585] uniform and noncompetitive prices on various types of glass containers maintained throughout the United States, the defendants have made excessive profits.

Now, then, we take the position in this case that we have to justify our operation; we have to justify the prices that are charged, in a general way, by showing Your Honor our method of operating, and to show Your Honor that what we charge the public is not the result of any combination, but it is the result of the efficiency of our plants. It is a difficult thing to prove the negative—always is—and that is the position that we are placed in.

Now, again, we are charged with so conducting our business, as we have said once before, as to retard the progress of science and the useful arts—a broad general charge of that kind—and what relief the government is intending to finally ask, we don't know, but it has been intimated here several times, especially by Mr. Isseks in his remarks, that something ought to be done to Owens-Illinois Glass Company. He doesn't say what, but he refers to it as "the biggest manufacturer in the world", and he thinks the Court ought to dissolve it.

The Court: Is there any reason why the counsel cannot stipulate as to certain efficient methods, as the counsel has in mind that this witness may testify to, so that your point is in the record, without taking a couple of hours' time with this witness?

Mr. Middleton: No, Your Honor, we cannot. It is something like having to prove you are not married. Now, just [fol. 11586] think how difficult that is. Easy enough if you are going to prove the positive. But the government says that we, sometime in the past, did something which made us a conspirator, and made us forever charged with the charge of illegality.

The Court: I can't see how efficient research meets that point.

Mr. Apsey: We have alleged specifically, if Your Honor please, certain contracts and activities and negotiations which we claim are illegal. We have not alleged that Owens-Illinois, generally, has grown, for one reason or another, and that that constitutes a monopoly. The monopoly is in the legal power to exclude. We put in the evidence to show that point. The attempt at the present time to show that Owens-Illinois is a large company and has worked efficiently, just doesn't meet that issue, and is entirely beside the point. As I have said before, if it will save time, we will be glad to stipulate the facts as to that.

The Court: I would much prefer that counsel make an effort to stipulate it, rather than to take considerable time in having the witness delineating the activities of himself and his department in industrial research.

Mr. Middleton: But, Your Honor, I don't know how to stipulate matters which involve a complete description of an entire department of a business. Now the research and development in the glass business is just as important a part of the business as the hiring of men, or the operation [fol. 11587] of machines, and it is a thing which the government entirely overlooks and plays down, as is now being done, in order that the efficiency of the organization, the very lifeblood of the organization, the thing that makes it operate and give to the public the things it does at the price it does, and give the quality that it gives—in order that this information will not be brought out, and that that will be submerged and it will appear that this company—this company and other companies like it—are engaging constantly in just some kind of sitting around, maneuvering contracts and maneuvering patents or something of that kind, and that by reason of those maneuverings it is what it is today.

Now, Your Honor, I say this negative, to show this one thing, we think we are entitled to give the Court perhaps in one hour of time out of a year's trial, a brief picture of the thing, the heart of this business that makes it what it is today, the thing that justified expending $32,000,000 on plants in the last five years, the thing that identifies the business today, as being a different business from what it was ten years ago or in 1935.

The Court: I don't think you are meeting the anti-trust issue at all, charged with a violation of the provisions of the Sherman Anti-Trust Act. If counsel wants to proceed,

he may do so, but he has the Court's view of the matter. The same issue came up when the Hartford concern sought to go into the activities of its research department, and the Court then expressed himself as being of the opinion that that was not meeting any charge in the complaint; and [fol. 11588] it is the same issue here.

Mr. Wood: May I make one point, Your Honor?

The Court: Yes.

Mr. Wood: Mr. Isseks stated the other day that before the defendants' case was in that the government would probably amend its complaint.

Mr. Isseks: I did not, Your Honor.

The Court: Well, if there is an amendment in the complaint to make that evidence competent, then you may go as far as you care to in meeting this issue.

Mr. Isseks: Your Honor, I did not.

The Court: I would not permit an amendment of the complaint at this time, even if they wanted it.

Mr. Wood: Well, I will simplify that, Your Honor,—I would like to point this out: that Owens' position is different from Hartford's position, because Owens has contended from the very beginning of this case that if, as the government alleged, it got into a course of conduct by entering into the 1924 agreement with Hartford, then we say that we terminated that matter, the arrangement with Hartford, by our contracts of September 30 and October 1, 1935. Now, it has always been our position that the cancellation of those contracts showed our withdrawal from any type of arrangement that may have existed.

[fol. 11589] The Court: What has that to do with the effort to show the efficiency of the research department of the company?

Mr. Wood: Because this research was intensified in the latter part of 1935 and thereafter, and it shows an affirmative conduct on the part of Owens which would tend to negative the implications which the government draws from the evidence that there was any continuation of conspiracy. Now, there is nothing proved after 1935, and there is very little asserted, and the only thing the government can argue is that there is some implication of continuance. Now, we wish to show a decidedly different corporate course of action after that period. In other words, in '35——

The Court: Do you seek to show that you are more efficient today in your operations than you were prior to 1935?

Mr. Wood: We are going to show that the position of the company with respect to research and development was greatly intensified beginning in the latter part of 1935 and from then on. Now, from that it can be argued, and it will be argued, that the company was not depending on any sort of conspiracy, royalty income or arrangement with Hartford, for its income.

Mr. Apsey: In answer to that, Your Honor, this research and development goes to research in glass. The only research and development which Hartford was concerned with was in machinery. I don't see that that has any common basis. And furthermore, I don't see that the mere fact [fol. 11590] that they were working more diligently at research development after 1935, has any tendency whatever to show anything about their continuance of their relations with Hartford, and has no relation whatever to the matter of their contract tie-up or other tie-up with oral agreements with Hartford after that time.

Mr. Wood: Well, the question is clearly before the Court in Paragraph 188, as to whether or not Owens' profit, which is alleged here to be so exorbitant, is as charged by the government a result of contractual relationship, or whether it is due to the inherent capacity of the organization and the money that it has devoted to research and development. Now, the government is going to assert that it is the implication of all the evidence in the case that Owens' profit is due to contractual arrangements, and we think that we should have the right to put into the record through evidence which will show that the company's success has been due to its research and development and progressive qualities.

The Court: If you have any precedents for that, you may proceed.

Mr. Wood: I think Mr. Peters has one or maybe two cases, in the Chicago Board of Trade vs. U. S., and the Appalachian Coal case, vs. United States, and before we are excluded from this line of evidence, we would like very much to have an opportunity to apply those decisions to the evidence here.

The Court: What part of the Appalachian Coal case [fol. 11591] is it that you are relying on?

Mr. Wood: I haven't the case before me, but I think we could find it very quickly.

The Court: Well, I will defer this argument until next week. You may look at your cases in the meantime, and I would like to see some authority for this course of procedure.

Mr. Middleton: May we further leave this thought with Your Honor——

The Court: Yes.

Mr. Middleton: As Mr. Wood has said, the government takes the position, with some authority, perhaps, to support them, that once they have established a prima facie case of some agreement with Hartford which they claim is or may be illegal, that the presumption of the continuance of that relationship continues throughout, and that by positive evidence it is necessary for the defendant to show a withdrawal from that relationship. Now, we have shown the cancellation of the agreements which the government said were the agreements which put us into a conspiracy. We have shown those cancellations as of 1935. But the government continues to make the claims, openly and repeatedly, that the relationship has continued to exist, notwithstanding our positive evidence of cancellation of the instruments. Now the question arises, how can this defendant or any other defendant prove that negative—prove that it no longer was occupying any relationship with Hartford, such as was occupied previously, if the cancellation of [fol. 11592] the agreements do not suffice to terminate it. Now, how can we show it? It is that negative thing that is so difficult to show. We don't know how to show that except to show our entire course of conduct, so that the Court will have before him the things we did before, and the things we have done since, so there can be a contrast.

The Court: Now, there have been a number of cases tried in the past, a number of Sherman Anti-Trust cases. There is the Eastman Kodak Company case, the Standard Oil case, the recent Oil Cracking, Ethyl Gasoline case. Now, there are all of these cases, and I would like to see whether counsel has any authority for taking the position that he may show that this concern that is attacked by the Anti-Trust Division in charge of violations of that Act, that this concern is a highly efficient organization, and therefore because of its efficiency it serves to the public its particular article or product at a low price, and the public thereby is benefited. Now, if there is authority for that, I would be glad to see it. Certainly in all of these cases that have

been tried, there is some vestige of authority as a precedent for taking that position. I am open to——

Mr. Middleton: But, Your Honor, the proposition that we are advancing is much broader than that. Now, it is not primarily to show that we are efficient, but it is to show our course of conduct since 1935, which is the only means we have of showing Your Honor that we are pursuing a course irrespective of any arrangement with Hartford—we are pursuing a different course from what was pursued [fol. 11593] up to October, 1935, which is the only way we know of getting this before Your Honor to decide whether or not we are now operating in the light of some arrangement with Hartford or are going a different road with different ideas, different principles applied to our manufacturing, investing money for different purposes, with a different ideal of business, and the development of business. Now, all of this goes to that general broad subject that results in efficiency, Your Honor, but it is not put in for the purpose primarily of showing efficiency.

[fol. 11594] The Court: Let's speculate for a moment. Suppose the Court permitted you to go ahead, pursuing this theory, then is the Court obligated to allow the government, on rebuttal, to show you are not an efficiently-conducted organization, that, as compared with the standards of some other concern, you are less efficient, your business is less efficiently operated than that of the standard, regular concern on a similar basis, and that you ought to be more efficient?

No, the Court is not going to permit that sort of wandering away on the by-paths from the main issue. Where are you going to go?

Mr. Middleton: No, Your Honor, that is not the point. It doesn't go directly to the efficiency but it goes to the general method of operating the business, so that Your Honor can contrast the action and the conduct of the business since 1935 with that prior to 1935.

The Court: I would like to see some authorities next week, and counsel will have ample time between now and then to produce some authorities for this peculiar manner of getting at this question.

Mr. Apsey: If Your Honor please, the normal way to prove, if Owens wishes to prove it, that the methods were discontinued in 1935, is by the testimony of witnesses who have had contracts with Hartford concerning the licensing

policies, and that those policies have been discontinued, they are not doing what they did do any more. But there [fol. 11595] is nothing in these contracts about research and development, and there is no tendency by showing research and development, to show that any course of conduct has been discontinued or changed.

The Court: Well, you may explore the authorities on it and cite them to the Court next week, or you may pursue a different course. If counsel on both sides can stipulate, enter into a written stipulation, that may be done. Whatever is done by agreement, the Court is not going to overturn, but as against objection to this line of testimony, unless authority can be shown for it, the Court is inclined to sustain the objection.

Mr. Williams: May it please the Court, might I make a suggestion here? There is one direct allegation in the bill toward which this testimony, largely,—a good deal of it,—goes directly. The defendants are charged that they have "discouraged and impeded the progress of science and the useful arts."

The Court: I think probably,—and I have taken that to mean,—I believe that that meant the inventive genius, that they have stifled the inventive genius, as far as the capitalization of inventive genius is concerned, as to obtaining patents. If I am mistaken about that, I am subject to correction.

Mr. Williams: I submit it is a good deal broader than that, and we propose to show by this witness that the company's work is divided into two classes of research work: scientific and investigational study; and second, the applications on which patents were issued. In the first we will show [fol. 11596] this witness, and his department, has done a great deal of investigating work and has disclosed it to the public, and that that is the type of work and type of business that leads toward the progress of science and toward the progress of the arts and application of science generally, and that that has been of value.

Now, the charge is made broadly,—and we certainly have the right to meet the charge,—whether it is put in as a stinger, you might say, to add color or atmosphere or what not, to add a sting, to add weight to what they claim we have done by reason of contracts and all that,—and if you read the bill, I have a very strong notion you would think we were engaged in the policy and that all we did was

make contracts. That, we say, was a minor part of the business, and this part of the business we are now about to show does show the research in science, pure science, disclosed to the public and to the benefit of the public.

Mr. Middleton: And this all goes into the development of the machine.

Mr. Williams: I am discussing it as going beyond the company itself. It goes to the progress of the science and arts generally, more particularly in ceramics and glass, but to the advantage of all the public and those who may be engaged in business in that branch.

Mr. Apsey: If Your Honor please, that allegation about discouraging improvement and progress in the science and useful arts follows immediately after the statement that by establishing and maintaining the said monopoly and com- [fol. 11597] bination by the various acts hereinbefore alleged, the companies have done so. In other words, it is only by the contracts, by the combination and agreements, and as the result of that we contend the progress of science and useful arts is impeded. If, independently, Owens has carried on splendid research and promoted the science and art, that is not within the issue of the allegation or of the proof.

Mr. Williams: You certainly have said we have stifled competition, we have restrained trade,—they say by establishing and maintaining a conspiracy and monopoly, we have done a number of things, and among those are the retarding and impeding referred to. And I submit, Your Honor, that we have the right to deny every allegation made against us. Can we be really remitted to denying only those things the government claims are important to its case?

Mr. Apsey: Not at all, only to the things the government has shown. We haven't shown any attempts outside of contracts or agreements or monopoly in combination to impede the progress of science. We don't claim it has been done outside of those means. We claim it only by those ways; that is the only allegation.

Mr. Isseks: We will stipulate they have had whatever they say they have had in ceramics and glass. We have offered to make the stipulation forty minutes ago. They won't accept the stipulation. We are perfectly willing to stipulate, we think it will save time. We think it is irrelevant that in ceramics they have made developments

[fols. 11598-11600] of a certain kind, and in connection with glass they have made developments of certain kinds.

The Court: Well, I am going to recess court until Monday morning at 9 o'clock, at which time we will resume.

In the meantime, counsel may submit their authorities for this proposition.

[fol. 11601] (At 9:00 o'clock a. m. Monday, January 19, 1942, the trial was resumed.)

The Court: Call the first witness for Ball Brothers.

Thereupon, the Defendant Ball Brothers Company, called as a witness,

E. Arthur Ball, who, having been first duly sworn, testified as follows:

Direct examination.

By Mr. McCallister:

Q. Mr. Ball, will you state your full name and residence?

A. E. Arthur Ball, Muncie, Indiana.

Q. What is your present position?

A. I am vice-president of Ball Brothers Company, in charge of fruit jar sales and also during the War period in charge of the supervision of glass production; also a director of the Company.

Q. How long have you been employed by Ball Brothers Company?

A. Since I left the Army in 1919.

Q. Have you had any experience in connection with the sale of other ware aside from fruit jars?

A. Yes, I have had some experience in a general way.

Q. Will you tell us what you mean by a fruit jar, when you use that term?

A. A fruit jar is a wide-mouth glass container made especially for use by the housewife in home canning of foods, principally fruits and vegetables, and it is a container which has blown in the side of the jar the name or the brand.

Q. In other words, you then refer to that as a branded jar, do you not?

A. Yes.

[fol. 11602] Q. From the selling standpoint, what can you say of a fruit jar?

A. I am not sure I understand the question.

Q. Well, as a salesman would you consider a fruit jar a special item, or just an ordinary item of sale?

A. It is a special item; it is difficult to sell. It is necessary in the selling of fruit jars to anticipate the demand. The consumer of fruit jars is the housewife. They are sold by the manufacturer to the wholesale grocer or jobber, and by him, in turn, to the retailer, who sells them to the housewife. The housewife does not purchase the jars until she needs them. It is necessary, on the other hand, for the manufacturer to make them and get them distributed to various parts of the country, the various markets, ahead of the actual demand for them.

Q. Now, tell me something about the housewife's demands —are they regular and consistent and the same practically every year, or do they vary?

A. They vary with the season, with the condition of the crops in various parts of the country. A winter freeze may kill the fruit, or a spring freeze up until May may kill the fruit, and a drouth along in the summer, or a particularly wet summer may spoil the vegetable crops and hurt the sale.

Q. Now, would you also term the fruit jar a specially used article because it is sold specially to one trade and for one purpose?

A. Yes, I would call it special.

Q. Now, you have spoken of being in a position to supply the demand for fruit jars. Does that involve caps or lids?

A. Yes, the same thing would apply to closures, caps and lids and the rubber rings or gaskets.

[fol. 11603] Q. And why are you so anxious to supply the demand, as you say, or have fruit jars on hand when the demand occurs?

A. Well, the women who have used our products in the past and would like to or are willing to use them again must have them available at the retail grocers when they want them, or they might—or we might find that they are using a competitor's products.

Q. In other words, you are trying to keep a popular product on the market?

A. We are trying to keep our product available to the ultimate consumer.

Q. Now, you spoke of fruit jars being an item which is difficult to sell, and you also have called attention to the

fact that you are not, as a manufacturer, selling to the ultimate consumer, and with that in mind will you go into the question of difficulty of sales a little further?

A. Well, the wholesale grocers had been found in the past to be reticent to take in stocks of jars, invest their money in them in sufficient quantities to supply all the possible demand in the territory, for the reason that if the demand should not develop as anticipated, he would have them left on his hands, and they would be carried over into the following season. The seasons are very short, and they come on very quickly, are not easily foretold, and last a very short time.

Q. And as you say, the season is dependent upon weather conditions?

A. Yes.

Q. Throughout what territory do you attempt to distribute fruit jars in your effort to make them available to the housewife when the demand for fruit jars occurs in the different localities?

[fol. 11604] A. Every territory in the United States where there are foodstuffs grown suitable for canning.

Q. Now, in your attempt to supply the demand, do you distribute in an effort to supply what you conceive to be the minimum demand or the maximum demand during the next seasonal period?

A. We have to be prepared to supply the maximum demand.

Q. And the reason for that is as you have already stated —will you state it again?

A. The reason for that is if we are not prepared to supply the maximum demand the housewives who would like to use our jars cannot find them on the market.

Q. What does Ball Brothers do—I suppose you would call it—by way of sales promotion; that is to say, what does Ball Brothers Company do in an effort to make their jars popular?

A. We carry on radio programs and a certain amount of publication and newspaper advertising; we demonstrate at a number of State and district fairs throughout the country, we have a department known as the Educational Department, which is headed by a graduate Home Economist, and from that department go out demonstrators who demonstrate the use of jars and equipment to classes and clubs, or groups of women brought together usually through F. S.

A. and through the various County home demonstration agents in the country.

Q. What about the product itself in connection with your attempt to make it a popular product?

A. Well, we have to make a product that will in every conceivable case give satisfaction to the user. That means that we have to make a strong, sturdy container which can be used year after year, re-used, one that will seal, give a [fol. 11605] hermetic seal under any method of canning, and when used in any part of the country. It is also, as I have pointed out, necessary to have the jars available at the moment that the woman wants them.

Q. And this sealing, for the purpose of making hermetically sealed—first, let me ask you, in packing jars for distribution, are they equipped with lids and rubbers?

A. Yes.

Q. And now this matter of sealing, will you go into that a little more particularly, if you can?

A. The jars when packed and shipped from the factory are equipped with one type of closure; however, women often in purchasing new caps to be used on the jars that they have carried over purchased a different type of cap, and the jars have to be so made that they will seal on either the sealing shoulder or the top edge. They have two sealing surfaces, and they have to be inspected carefully on both of those surfaces.

Q. Now, by your statement I conclude that you are implying that there are two more or less generally used types of closures for fruit jars; am I right?

A. There are really three. You are referring to what is known as the Mason—the closures for the Mason sealing jars?

Q. I see; will you explain that, please, a little further?

A. Mason jars has a screw thread and can be closed with a cap and rubber gasket resting on the sealing shoulder which is down from the top edge.

Q. Down below the top edge?

A. Down below the top edge on the finish of the jar. The other type is one that seals on the top edge with a metal or [fol. 11606] glass lid and a screw band.

Q. Now, in order to insure the effectiveness of the jar with either closure, what does Ball Brothers do in connection with packing and shipping of jars?

A. Will you repeat that question?

Q. In connection with this matter of obtaining a hermetic seal with either one of the two closures, what precaution does Ball Brothers take before shipping jars?

A. Well, very careful inspection by the inspectors back of the tempering furnaces.

Q. And does that inspection go to the jars, lids and rubbers?

A. Goes to everything, yes.

Q. Now, how is this more or less nation-wide distribution of fruit jars accomplished by Ball Brothers Company?

A. We sell to the wholesale grocer or jobber and the chain stores. In the case of the wholesale grocers, they in turn sell to the retailer, and in the case of both they sell to the consumer. In order to get our jars distributed we have found it necessary to consign them to the jobbers, and to the wholesale grocers.

Q. Well, do you employ any salesmen?

A. Oh, yes. We have jobber salesmen, salesmen who call on wholesale grocers, and we have food brokers who are brokers selling on a commission basis a number of food products for manufacturers to wholesale grocers. Then we have seasonal specialty men who call on the retail trade and pick up orders which they turn over to the wholesale grocers.

[fol. 11607] Q. Why are these orders solicited by a specialty salesman and then turned over to the wholesale grocer?

A. Well, that is one way of making sure that the wholesale grocer handles our jars. If we hand him orders from the retailer amounting to a portion of a car, he, we hope, will order a full car. We ship our jars in straight carloads.

Q. In other words, it is a device by which you attract the attention of the wholesaler or the jobber?

A. Yes.

Q. And you use that device in your effort to sell jars to the wholesaler or jobber?

A. Yes.

Q. Now, you have spoken of the specialty salesmen and you called them "seasonal men". Do you employ them throughout the entire country all the time?

A. No. We have employed them only in certain sections of the country, and for a certain limited time prior to the active season.

Q. Then why do you feel it necessary to employ them in certain sections? That is what I am trying to get at.

A. We had done that to meet competition. It was a practice that was started by competition and we have had to do it to either hold the territory in which competition is making inroads, or to regain territory where competition has taken business away from us.

Q. You have used the word "consignment" in connection with what you term sales to the wholesaler. Will you explain what you mean by that and the reason for consignments?

A. Yes. Wholesale grocers are reticent to invest their [fol. 11608] money and tie up their warehouse space in fruit jars in ample quantities to take care of the maximum demand in their territory. Therefore, as an inducement to them to carry ample supply, we consign or ship the jars to the wholesale grocer and leave them with him as our property until they are sold by him to the retailer, he paying the freight, insuring the jars and storing them for us.

Q. The matter of storage and the matter of freight, I suppose, has something to do with impelling the wholesaler to resist even the consignment of large quantities of jars, is that right?

A. That is right to some extent. Some of the wholesale grocers don't even like to give up the storage space.

Q. Is that matter of consigning jars from the standpoint of your own personal knowledge, more or less universal with fruit jar distributors and manufacturers?

A. Yes. I believe it is universal.

Q. Are you sufficiently familiar with the sale of packers ware to make a comparison between the sale and distribution of packers ware and the sale and distribution of fruit jars?

A. Yes. I have had enough contact with the sale of packers ware and bottles to make such a comparison.

Q. Will you make a comparison as to the matter of sales?

A. In the case of packers ware the containers are sold to packers of food or manufacturers of food. In other words, they are sold to the consumer by the manufacturer. They are made and sold with a known use in view and the conditions under which the containers will be used are also known.

[fol. 11609] Q. And also the purchaser knows his requirements at the time of purchase?

A. Yes. He can anticipate his production exactly and can order accordingly.

Q. Now, carry your comparison down to fruit jars?

A. Whereas with fruit jars the wholesale grocer doesn't know how many he will need. He doesn't know how soon they will be sold, and the consumer doesn't know until the fruit or product to be canned is in her kitchen, usually. It is not an uncommon thing at all to have a woman put her tomatoes or fruit on the stove and then send down to the grocer to buy her containers to put them in.

Q. Now, will you make a comparison between the two products, that is to say, packers ware and fruit jars, in connection with the product itself,—that is to say, the fruit jar in one case and the packers jar in the other case?

A. Well, the fruit jar has to be made for use in all the various climates of this country, at great range of altitudes, under various conditions, and has to withstand the number of canning processes used by the women. The women are not always as careful as they should be in the handling of the jars and the contents as to, for example, placing them in a draft after they are taken from the stove, or placing them on a stone or marble-top table, which is a shock to the glass.

Q. Because of the difference in temperature?

A. Because of the difference in temperature of these [fol. 11610] varying factors which a fruit jar has to be prepared to withstand. Whereas it is known by the glass manufacturer and by the customer, who is the consumer in the case of packers ware, the conditions under which that glass container is to be used.

Q. And that starts back with the washing, doesn't it?

A. It starts with the preparing of the container for filling. It goes through uniform conditions on the production line and glass can be made for those particular conditions that they have to meet with in packers' requirements.

Q. Then from the standpoint of the manufacturer, the fruit jar must be prepared for its particular uses, and the packers' jar must be manufactured and prepared for an entirely different use, is that right?

A. That is correct.

Q. You have spoken of fruit jars as being used over and over again by the housewife. Does that change the manufacturing procedure in connection with fruit jars over the manufacturing procedure in connection with packers' ware?

A. Yes. In recent years there has been a tendency to lighten the weight of the glass containers. For example, beer bottles were reduced first, I believe, in weight and were sold and used as one-trip bottles. That same procedure of reducing the weight, thereby cutting down on the freight and cost of the containers, has gone on in other fields, and in the case of packers' jars of the same size and general description as fruit jars the weight has been reduced to as low as 10 and 11 ounces.

[fol. 11611] Q. What sized jar?

A. For a quart or 32-ounce size jar. Whereas in fruit jars we have felt it wasn't safe to reduce the weight below 14 ounces.

Q. Do you consider packers ware, for example, a single-use item?

A. Yes.

Q. And by comparison, a fruit jar is a multiple-use item, would that be a fair statement?

A. I think so. Yes.

Q. There has been suggested in this case that packers ware cut into the fruit-jar trade. What can you say as to this?

A. Well, that is true. Packers ware, after it is emptied of its product which it contained when it was purchased, is often used by the housewife who is thrifty to repack and close again.

Q. Is it a fact that some packers ware goes directly from the manufacturer to the fruit-jar trade also?

A. Yes. I think there have been cases of that where not the packer but the wholesale grocer would, in some way or other, obtain some packers' jars and fit them with caps and rubber gaskets for use in home canning.

Q. Now, you have spoken of the thrifty housewife who, because of that thrift, sometimes uses a packers' jar for a fruit jar. How do you know that? How do you know situations of that sort exist?

A. In two ways. We have seen them displayed at county fairs in competition, and we have also had a number of complaints of trouble with containers, and when we have [fol. 11612] seen, or had described to us, the containers which were used, they had turned out to be plain jars, unbranded, which had been used previously as packers' jars.

Q. And not fruit jars at all?

A. No.

Q. Now you say the complaints come in. Do you foster correspondence with users of fruit jars?

A. Yes, we do.

Q. In what way?

A. I think I said awhile ago we have a woman who is a graduate home economist who answers all correspondence from women and invites correspondence. She attends the fairs and meets women, herself, and invites direct correspondence.

Q. There has been a suggestion in this case that price leadership exists in the glass container industry. Is this a fact?

A. I think it is; yes.

Q. What does the term "price leadership" mean to you?

A. To me price leadership means the recognition of the oldest or the largest manufacturer in a certain line and the following of his price.

Q. Can you give any example?

A. For example, I think that Ball Brothers is the price leader in the fruit jar industry. Other manufacturers seem to wait until we come out with our price list and their prices more or less follow ours.

Q. When they are announced?

A. Yes.

[fol. 11613] Q. Does price leadership involve any agreement between competitors as to prices, insofar as you know?

A. Insofar as I know concerning Ball Brothers, it does not. There is no agreement or understanding, oral or otherwise, as to prices.

Q. Ball Brothers are always free to sell at such prices as it deems desirable?

A. Yes, and so are the other manufacturers.

Q. There has been some testimony in this case as to, I believe it is the Alexander H. Kerr Company. Who is the Alexander H. Kerr Company, if I am stating the name correctly?

A. There are two Kerr Companies. I forget whether the Alexander H. Kerr Company is the manufacturing or the selling company.

Q. Well, let's consider them as one. I didn't know there was two.

A. One is the Kerr Glass Company, I believe, and the other one is the Alexander H. Kerr Company.

Q. What do they manufacture, from the standpoint of your knowledge and your information?

A. They manufacture fruit jars of the Mason type.

Q. Do you consider them a competitor?

A. Yes, they are.

Q. You have spoken of the practice of using specialty salesmen. Who, if you know, originated that practice?

A. To the best of my knowledge, Kerr originated it.

The Court: Why do you say "of the Mason type"; who was this fellow Mason? The Mason jar is designated with [fol. 11614] the word "Mason" on it?

A. Yes, that is true, Judge.

The Court: How did they get that name?

The Witness: There was a man named Mason who first took out a patent for a screw-top jar and that is used to distinguish them from what is known as the lightning style jar which is a jar with a glass top and a wire clamp.

Mr. McCallister: Just as a matter of information, I will say there hasn't been a patent on the Mason jar since early in the '80s. Of course this man doesn't know that, and I only know it from the examination of the records we have made in our attempt to find out the existence of patents on jars.

Mr. Apsey: The government will stipulate that, Your Honor.

Mr. McCallister: All right. Thanks.

Q. Would you class Kerrs as a substantial competitor?

A. Yes, I would.

Q. I forgot to ask you in the beginning: are you the E. Arthur Ball who is named as defendant in this case?

A. I am.

Mr. McCallister: That is all.

Cross-examination.

By Mr. Apsey:

Q. The packers ware you have been talking about in answer to Mr. McCallister's questions, is in general design and shape the same as the Mason jar, is that right?

A. That is right, except for the name.

[fol. 11615] Q. Except for the brand?

A. The brand blown in the jar, yes.

Q. Is there any difference in the glass composition between the packers' jar and the Mason fruit jar?

A. No. You mean the ingredients that go into the glass?

Q. Yes, that go into the glass.

A. No.

Q. You say there may be a difference in weight; how long a period has there been a tendency to make the packers' jars lighter weight than the Mason fruit jars?

A. For several years.

Q. That is a comparatively recent development, isn't it?

A. Yes, it is.

Q. Since 1939?

A. No, it would go back farther than that.

Q. Can you fix approximately how far back,—'37 or '38?

A. No, I am afraid I can't answer that.

Q. Well, it would not be before 1937, would it?

A. It might be.

Q. You can't give even a general idea when that attempt to lighten the packers' ware began to take place; it was after the beer-bottle episode, wasn't it?

A. The beer bottle?

Q. That was the first?

A. Yes. That was the first light-weighting program.

Q. That program was sometime around '37?

A. I am sorry, I am not prepared to answer that question.

Q. I suppose that tendency to lighten the packers' ware was a matter that came gradually into use. It was nothing [fol. 11616] that came all of a sudden; isn't that right?

A. That is correct.

Q. So even though you, perhaps, could not specify exactly whether it began in 1937, wouldn't it be accurate to say it had not assumed any important proportions before that date?

A. Yes. I think you could assume that.

Q. Isn't it a fact that most fruit jars and packers' ware still are of the same weight?

A. No.

Mr. McCallister: By "same weight" you mean as to the——

Q. As each other. That is, of course, for the same type jar?

A. No. I think there is a difference generally.

Q. Now, I believe you testified that insofar as you knew as to Ball Brothers' price leadership, it did not involve any kind of agreement. I take it you made that qualification as to Ball Brothers because in some instances you have knowledge that price leadership does involve an agreement, at least a tacit understanding?

A. No, not at all. I speak only for Ball Brothers because I have knowledge of Ball Brothers.

[fol. 11617] Q. And you don't have knowledge of any other instance in the glass container industry or the glassware industry where there is a tacit understanding which results in price leadership?

A. No.

Q. What happens if, for example, some competitor of Ball Brothers undertakes to cut, undercut the price of glassware which is set by Ball Brothers? Well, before you answer that question I will ask you, has that ever happened, to your knowledge, that any of your competitors have offered a price lower than your prices before your prices came out?

A. Before our prices came out?

Q. Yes, before the price which I think you—have any of your competitors ever lowered the price?

A. Yes.

Q. Of fruit jars?

A. Yes; that often happens.

Q. And what is the result of that with respect to the prices charged by your company?

A. The results are varying. It depends on the amount of business we find we are losing as to whether or not we meet this situation.

Q. Well, isn't it a fact that any competitor of yours that should reduce the price of fruit jars prior to a move on your part would immediately have to meet a similar or a greater cut on behalf of your company?

A. Well, that might be the effect, but each time—there is no policy on that, each time we consider the situation as it arises.

Q. Well, isn't that the reason why, as you have just [fol. 11618] testified, your competitors as a rule follow your leadership and do not make price changes until they are made by your company?

A. Oh, I think generally, yes; I think they realize that they cannot get a higher price, and if they do not follow

our price fairly closely that they will reduce—will force us to reduce.

Q. And if you do reduce by virtue of your size and leadership in the industry, they would be unable to survive a long price war; isn't that true?

Mr. McCallister: That is asking for a conclusion of the witness, Your Honor.

The Court: Well, he may give his best judgment of the matter.

A. Well, I don't think that that necessarily follows.

Q. Well, have you any explanation then, as to why a company should follow your leadership in setting prices, if that is not the reason?

A. Well, just as we follow the lead of other manufacturers in other containers.

Q. Well, isn't that the reason why you do?

A. We do so because we, of course, want to get the best price we can for our product. We know we cannot get more than the leader in the industry.

Q. And you know also if you reduce the price the other company will meet your price, and you will be unable in the long run to undersell them; isn't that right?

A. You are talking now about the regular case where we follow the leadership?

Q. Yes.

[fol. 11619] A. Yes, sir.

Q. And whose leadership do you follow in the industry in other products than fruit jars?

A. We follow the leadership of the Hazel-Atlas Glass Company in wide-mouth packers' ware, and of the Owens-Illinois Company in narrow-mouth beverage and liquor ware.

Q. And is it the practice generally throughout the industry to follow the leadership of Hazel-Atlas in wide-mouth packers' ware?

A. I think it is.

Q. And is it a similar practice throughout the industry to follow the leadership of Owens-Illinois in narrow-mouth beverage ware of the type *of* you have described?

A. Yes, I think it is.

Q. And that is pretty universally the case, is it not?

A. Pretty universally the case, yes.

Q. Now, you spoke about the Kerr Company. That company is not a Hartford licensee, is it?

A. No.

Q. And never has been?

A. I think not.

Q. Do you have any other competitors in fruit jars besides the Kerr Company which are not licensees of the Hartford Company?

A. No, I don't think we have.

Q. You spoke of the difference between—or certain differences you spoke of between fruit jars and packers' jars of similar size and capacity and shape. It is a fact, is it not, that the prices charged for packers' ware, jars of that [fol. 11620] type, are considerably below those which are charged for Mason fruit jars?

A. Well, I don't think you can make the comparison, because in the case of the packers' jars the bodies——

Q. They may be different, but answer the question, please—I am just asking you whether the prices are not as a matter of fact lower?

A. The price of the packers' jar only, without a closure, as sold to the packer in a different type of a case is lower that the completed fruit jar package.

Q. On the average, how much lower would you say those packers' jars sell?

A. If I may add—or if I may deduct from the fruit jars the market value of the cap and rubber which is packed with it,——

Q. Alright, compute it that way for us.

A. ——it would sell for about 15 cents a gross more, the fruit jar would.

Q. The fruit jar?

A. Yes.

Q. And what percentage is that of the total price? What is the total price of the fruit jar and the packers' ware jar, so we can get some idea of the percentage?

A. Well, fruit jars sell for about $7.00. I am speaking of quart Mason jars—about $7.00. And the packers' ware for, I believe the price now is $3.60.

Q. A gross?

A. A gross. Quart packers' jars free of caps.

Q. I understand you to say that 50% difference is in the gross price—price per gross?

A. Yes, I mean per gross.

[fol. 11621] Q. Now, maybe my arithmetic is wrong, but as I understand you, it seems to me the difference between—did you say $7.50 and $3.50?

The Court: The caps and the rubber bands make the difference, he says.

The Witness: The caps sell for about $2.00.

Q. Oh, I meant to make my second question comparable to the first, and what I ask you is what the price of the Mason jar without the cap and rubber band would be as compared with the price of the packers' ware jar?

A. Well, it would make a difference of $1.50 instead of 50 cents.

Q. $1.50?

A. Yes.

Q. And can you give us the overall price of each, so we can get an idea of the percentage?

A. In the case of fruit jar, deducting the caps and rubbers, it would be about $5.00; in the case of the packers' ware, about $3.50.

Q. And do you sell the packers' ware jar as well as the Mason jar?

A. Yes, we do.

Q. Can you give us an idea of the difference in cost of production per gross of the fruit jar and the packers' ware jar?

A. Oh, no, I can't give you that. As I pointed out, there is a difference in the weight which reduces the cost of the packers' jars as compared with the fruit jars.

Q. Yes, that is why I asked you the question. You don't know the difference in cost even approximately?

A. No, I don't offhand.

[fol. 11622] Q. Well, am I correct in saying that the difference in cost would not be as great percentage-wise as the difference in the price which you charge for the packers' ware type of jar and the Mason type of jar?

A. I don't understand that question.

Mr. McCallister: Now, may I ask, are you including there all costs, including selling costs?

Mr. Apsey: I am talking now about cost of production only—cost production.

(Last question read on request of witness.)

A. Well, I still don't understand the question.

Q. Well, I will try to rephrase it, then. I assume that your company computes the cost of production of different types of ware, and I would like to know whether a packers' ware jar is proportionately—cost of production as compared to the fruit jar, is the price which you charge for packers' ware less than the price which you charge for the fruit jar?

A. Oh, I see. No, I think it costs,—well, to answer it in my own words, there is more of a margin of profit in fruit jars than there is in packers' jars of the same size and capacity.

Q. Can you give us an idea percentage-wise of the excess of the margin of profit of the fruit jar over the packers' ware jar?

A. The manufacturing cost, you mean?

Q. No, what I believe I asked about—you said the margin of profit, did you not, was greater?

A. Over manufacturing cost. The difference between manufacturing cost and selling price?

Q. And selling price?

[fol. 11623] A. Of fruit jars is greater than on packers' jars.

Q. Is that what you meant by the margin or profit?

A. Over manufacturing cost, yes.

Q. I see. Well, can you give us an idea of the per cent greater that that margin is in the case of the——

A. No, I am not prepared to answer that.

Q. Is it correct—do I understand your testimony correctly, Mr. Ball, that the cost of producing the packers' jar is less than that of producing the Mason fruit jar?

A. Yes, that is correct.

Q. So that you would say it is a cheaper type of jar?

A. No, I wouldn't say it is a cheaper type of jar.

Q. Well, simply because it is a lighter weight jar; is that the reason?

A. Yes.

Q. Are there any other elements in the manufacture of the jar which account for it being cheaper except the lightness in weight?

A. I think we have to give fruit jars more careful inspection than the packers' jars.

Q. That and the lightness of weight are the two differences?

A. Yes.

Q. Now, in selling the packers' ware jar, don't you also sell caps and rubbers?

A. Yes, we do.

Q. And you sell them separately and ask a separate price for them?

A. No, we sell them on the jar.

Q. In packers' ware don't you also sell the caps when you sell the packers' ware?

[fol. 11624] A. In some cases we sell the caps, and in some cases they are bought from the cap manufacturers.

Q. But you always sell them with the jar on the fruit jar; is that right?

A. Yes, sir.

Mr. Apsey: That is all.

The Court: Any question on redirect examination?

Mr. McCallister: Yes.

Redirect examination.

By Mr. McCallister:

Q. Now, this matter of more careful inspection of fruit jars—does a more careful inspection occasion—is a more careful inspection likely to occasion more discards at the end of the lehr and before packing of the jars?

A. Well, not necessarily. If the machine tenders are careful at their end, each one is being made for a different purpose, and if they are made to serve their purpose properly, at the machine end of the tempering furnace, the thrown-out jars need not be excessive.

Q. Do you know of any case in which packers' ware is inspected to insure the adequacy of two sealing surfaces?

A. No, I don't.

Q. And in that respect they would differ from fruit jars; am I right?

A. That is right.

Q. In connection with this discussion of margin of profit on fruit jars and on packers' ware, were you taking into consideration the question of consignment of goods, ware-[fol. 11625] housing and distribution conditions?

A. I misspoke. I was referring to the margin above manufacturing costs.

Q. So you were not taking into account all costs?

A. No.

Q. Do you want to amplify your answer a little further then, in connection with Mr. Apsey's question as to whether or not the difference in the margin of profit is greater in fruit jars, or substantially greater in fruit jars, than in connection with packers' ware? Will you go into that a little more fully?

A. Will you state the question now, please?

Q. I believe that you and Mr. Apsey arrived at some figure as to the difference in the margin of profit?

Mr. McCallister: Am I right, Mr. Apsey?
Mr. Apsey: I think so, yes, $1.50 I believe he said.
Mr. McCallister: What?
Mr. Apsey: I think he said $1.50.
Mr. McCallister: Yes.

Q. Now, in arriving at the figure of $1.50 per gross on fruit jars over a lesser margin of profit in connection with packers' ware, were you taking into consideration the cost of consignment, the cost of warehousing, and the cost which necessarily followed year-around distribution of jars?

A. No, I was not taking into account any of those factors. In the case of packers' ware, they are sold direct to the packer, and sold on regular terms of cash within a comparatively short time after the delivery is made. In the case of fruit jars, we have a very extensive system, as I tried to [fol. 11626] point out, of handling in order to make the jars available to the consumer when the demand came. That involved the advertising, the selling, not only to the wholesale grocer, but to the retailer and consumer, and it also involves the carrying of quite a large department to keep the records of the consignment stocks, making the collection, instead of billing a carload of fruit jars at one time and collecting for it at one time, the collections are made month by month as sales are made during each month.

Q. So as a result you have your fruit jar accounts sometimes outstanding for many months; is that right?

A. That is right, or for more than a year, quite often.

Mr. McCallister: That is all.

The Court: Any further questions on recross-examination?

Mr. Apsey: Just a few, Your Honor.

Recross-examination.

By Mr. Apsey:

Q. You compute the selling costs for your fruit jars and your packers' ware separately, I suppose, so that you know the difference in selling cost as well as manufacturing cost for the two types of ware; isn't that true?

A. Well, that is partly true.

Q. Well, don't you have to know the entire cost to you of producing any product, both production cost and selling cost; isn't that customary in any business of the type which you are engaged in?

A. Well, there is a certain amount of cost that goes into it what is known as undistributed overhead, which is distributed at the end of the year.

[fols. 11627-11628] Q. Certainly, but all of the cost is distributed to each item, isn't that right?

A. Yes.

Q. Now, can you tell us the approximate amount by which the selling cost of your packers' ware is less, if it is less, than your selling cost of your fruit jars?

A. No, I can't. I am not prepared to answer that.

Q. Well, you are the vice-president in charge of sales, are you not?

A. Of fruit jars.

Q. And you say you have some connection with the sale of packers' ware of your company?

A. Yes.

Q. And at the present time you are also in charge of that, are you not?

A. No.

Q. I thought you said during the defense, you were?

A. No.

Q. Well, can you give us this much: can you give us the selling cost with respect to Mason fruit jars per gross?

A. Not without consulting our cost department.

* * * * * * *

[fol. 11629] Thereupon the defendants called as a witness in their behalf, F. G. Littler, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. McCallister:

Q. Will you state your name?

A. F. G. Littler.

Q. And your present address?

A. Muncie, Indiana.

Q. By whom are you employed?

A. Ball Brothers Company, Muncie, Indiana.

Q. How long have you been employed by Ball Brothers Company?

A. Since 1912.

Q. In what capacity are you now employed?

A. Production manager of Ball Brothers Company.

Q. How long have you been employed as production manager of Ball Brothers Company?

A. Since 1925.

Q. Prior to 1925, were you in the production department, so-called?

A. Yes, sir; beginning in 1916.

Q. Can you outline, or will you outline briefly your duties as production manager?

A. To receive all orders for glassware and to——

Q. From whom?

A. From the sales departments—and to schedule production of glassware of the forming machines and furnaces, and to control, by written instructions and the issuance of data sheets, the quantity, quality, finish and packing of [fol. 11630] glassware. I also issue all orders for the manufacture of mold equipment and plungers.

Q. And by mold equipment and plungers you mean the tools for the making of glass articles, do you not?

A. Yes, sir.

Q. In outlining that did you comment on scheduling ware through the factory?

A. Yes, sir.

Q. I hand you five pieces of paper which have been marked for identification as Exhibits B-6077-A to E, inclusive, and ask you to state if you know what they are?

A. These sheets constitute a graphic chart of the operations of our glass furnaces from the year 1910 to 1935, inclusive.

Mr. McCallister: Your Honor, I will have to explain that we found we could not put the coloring on these photostats,

so the witness, speaking from the original chart, will mention the coloring. We will just have to do the best we can about that and make such explanations as may be necessary.

Q. Who made those charts, if you know?

A. They were made by me.

Q. When were they made?

A. About 1925 would be the beginning, and they were finished at the end of 1935.

Q. And from what data were they made?

A. The data was obtained from our production and storage records, records which are kept in my department and under my control.

[fol. 11631] Q. That is to say, they were made from records under your custody and in your keeping?

A. That is correct.

Q. Now, will you explain the chart generally?

A. The upper portion of the chart is designed to show, in the left-hand column, the numbers of our furnaces.

Q. That is at the Muncie Plant?

A. At the Muncie Plant. The numbers across the top of the sheet indicate the years from 1910 to 1935. The years are separated by heavy vertical lines, and the spaces assigned to each year, divided into twelve spaces, each indicating the month of the year. So that when horizontal lines are drawn from the furnace number, it indicates the length of time that the furnace was in operation; and a break in the line would indicate the period when that furnace was closed down.

Q. Well, let's just take as an example the horizontal line opposite the numeral "1" in the vertical column.

The Court: For the year 1910?

Mr. McCallister: Well, we will say for the years 1910, '11 and '12.

The Court: All right.

Q. And tell us what the chart indicates in connection with that furnace and those years, going into full detail as to the colors and other things.

A. The line beginning in September, 1910, indicates that No. 1 furnace went into operation the second week of September, 1910, continued until the second week in April, 1911. The break in the line indicates that that furnace was closed [fol. 11632] down until the last week in June, 1911, and

resumed operation at that time and continued until the middle of September, 1912. The break in that line at that point indicates that the furnace was closed down for a month and a half, and resumed operation the first of November.

Q. And carried through?

A. And carried through until the end of 1913.

Q. Now, I notice on your chart that line is colored green. What does that mean to you?

A. The green color indicates the color of the glass.

Q. Now, the green coloring, wherever occurring, also indicates the type of glass made by the furnace?

A. The color of glass, yes, sir.

Q. Well, you know it as "green glass", do you not?

A. That is right.

Q. That is the type of glass. Now, merely for the benefit of the record, will you state the color of the first four horizontal lines on the sheet, labeled "B-6077-E"?

A. The colors in the first four lines on this chart indicate operation on green glass during the entire period from 1910 to 1915, inclusive.

Q. Now, will you tell me what the word "Owens" applied to those three horizontal lines opposite "Furnaces Nos. 1, 2 and 3" means to you, in connection with the chart?

A. The presence of the word "Owens" under "Furnace Nos. 1, 2 and 3" for the years 1910 and '11, indicates that those furnaces were operated with the Owens suction machine during those fires and continuing on through until otherwise marked.

[fol. 11633] Q. Now, I notice in the very left-hand portion of Column 1910 in this exhibit, we have the word "Brooks" as applied to the horizontal lines opposite the numerals 2 and 3. Tell me what that means.

A. The word "Brooks" under the lines following numbers 2 and 3 furnaces, indicates that those furnaces were operated with forming machines using the Brooks feeder.

Q. That is to say, they were forming machines fed by Brooks feeders?

A. That is correct.

[fol. 11634] Q. Now, then, taking your furnace No. 2 and bearing in mind the word Brooks and also the word Owens as applied to the horizontal lines, tell me what that means to you?

A. The word Brooks following the line opposite No. 2 furnace indicates——

Q. Now, you have already said that, haven't you?

A. Yes.

Q. What I am trying to bring out——

The Court: Has that been changed over from Brooks to Owens Machines in 1911?

The Witness: Yes.

Mr. McCallister: That is what I was trying to bring out.

Q. When you speak of an Owens machine, can you tell us briefly the type of machine you are referring to, or the machine you are referring to?

A. I am referring to the type of machine made by the Owens people. It was a suction machine. It drew its glass into suction molds from a revolving pot, and the parison was formed in that manner and delivered to the blow mold.

Q. Now, in connection with furnace No. 4, or the numberal 4 in the vertical column, I find the word "new" in the vertical column 1913, and that word precedes a horizontal line. Tell me what that means?

A. The word new indicates that that furnace was newly made in 1913.

Q. Now, if you will drop down to the horizontal furnace, lines 5 and 6. I will ask if the word Brooks associated with [fol. 11635] those furnaces also means that they were equipped with feeder-fed forming machines?

A. That is correct.

Q. And how long, from this chart, were they so equipped? You may have to look upon other sheets of the chart?

A. Nos. 5 and 6 furnaces were equipped with forming machines fed by Brooks feeders until 1914.

Q. I see how you got that with No. 5, because I see the word Owens machine applied to No. 5 in the column 1915, but how do you get it in connection with No. 6 furnace?

A. No. 6 furnace did not operate in the latter half of 1914 nor in 1915, and when it resumed operation in 1916 it was equipped with Owens forming machines.

Q. Oh, I see. I had that covered up. That is the reason I did not see it. Now, is there anything on this chart which tells you the type of machines that were used with No. 9 furnace, and if so, what?

A. In the Column 1918 is the word "gatherer", which indicates that the hand process of making ware was used until that time.

Q. Until what, would you say, is the specific date there?

A. From——

Q. No, I mean the specific date up until which hand-gathering was used?

A. Until the end of the third week in January, 1919.

Q. Now, skip over to Column 1920 and tell me what the notation there means to you, the notation in connection with this furnace No. 9?

A. The operation of Ball machines on that furnace operated with the feeder. There is also the notation Miller Tele- [fol. 11636] scopic written in there. The accuracy of my marking there the Ball machine was questioned, and the Miller Telescopic machine was inserted instead of the Ball Machine.

Q. In any event, the hand-gathering was displaced by a feeder-fed machine or machines?

A. That is right.

Q. In the early part of 1920?

A. That is correct.

Q. From that standpoint the chart is absolutely correct, isn't it?

A. Yes, sir.

Q. From your own knowledge, or from information that you have gained from records under your custody, state how many different ways of making ware were available to Ball Brothers Company, for example during the years 1910 to 1917?

A. There were three methods of making ware. The Owens suction method, the feeder method, and the hand method.

Q. During that period?

A. During the period 1910 to 1917, inclusive.

Q. Now, I will ask you the same question in connection with fruit jars. From your own knowledge, or from records under your custody, state how many ways of making fruit jars were available to Ball Brothers Company during the period that you have just spoken about, that is for 1910 to 1917, inclusive?

A. There were three methods, the Owens suction, the feeder-fed machines, and the hand-gathering.

Q. Do you know from records of your own knowledge that these various methods were ever simultaneously used during that period in the making of fruit jars?

[fol. 11637] A. I know from the records that that was true in, for example, the year 1913.

Q. You know that there was actually simultaneous production by all of those methods of fruit jars?

A. Yes, sir.

Q. Now, after 1917 from your knowledge or information how many methods were available for the making of ware by Ball Brothers?

A. You say ware?

Q. Fruit jars?

A. There were still three methods.

Q. After 1917 what were the three?

A. The Owens suction, the feeder operation, and the hand-gatherers until the year 1919—January, 1919.

The Court: The hand-gatherers quit in 1918?

A. That is correct.

Q. Then after that there were only two methods?

A. There were only two methods of making ware, Owens suction and the feeder method.

Q. How long did those two methods of making ware, and by ware I mean such as fruit jars, continue at Ball Brothers?

A. Until October, 1940, when the Owens—the last remaining Owens machines were removed from the furnace.

Q. Now, I have omitted to refer to one furnace, and I ask you to state the color of the line opposite furnace No. 7?

A. The purple color of the line opposite No. 7?

Q. What does it indicate?

A. It indicates the operation using opal glass for the manufacture of white liners for caps.

[fol. 11638] Q. How long was that furnace No. 7 used as a white liner furnace?

A. Until the present day.

Q. Is it stopped or still in use?

A. It is still in operation.

Q. Do you know generally how white liners are made at the Ball Brothers plant?

A. They are made with a pressing machine using a flow feed.

Q. A pressing machine fed by a flow feed?

A. Yes.

Q. To your knowledge—your own knowledge, as that used as early as 1925, for example?

A. Yes, it was.

Q. To your own knowledge, is that same machine being used today?

A. That is right.

Q. Do you know of your own knowledge or from records under your custody what was done to the furnace that had been serving Owens machines after the Owens machines were dispensed with in October of 1940?

A. There was but one furnace and that furnace was equipped with six Lynch forming machines.

Q. How were the Lynch forming machines fed?

A. Feeder-fed.

Q. In other words, after October of 1940 what furnace was that?

A. No. 3 furnace.

Q. After October of 1940, furnace No. 3 was revised by being equipped with feeders, and those feeders were employed to feed Lynch forming machines?

A. That is correct.

[fol. 11639] Q. Now, will you give me your understanding as to the reason why this substitution was made from Owens suction machine to Lynch forming machines or feeder-fed machines?

A. We found that the operation of Owens suction machines, three Owens suction machines on a furnace, did not provide a sufficient flexibility to meet the increasing diversification of our product. We found that we could not economically make short runs of a day or two on these machines, change to other types of ware on production time, because of the length of time required to change the mold equipment, and to get back in satisfactory operation. As contrasted with that, the operation of six or more other types of forming machines on a furnace would permit us to make very short runs on different types of ware, make these changes on production time, and still secure greatly increased production using the furnace as a production unit.

Q. Now, you mean an increased production over the Owens machine production?

A. Yes.

The Court: I think you may suspend at that point. The bailiff may recess court fifteen minutes.

(Recess 15 minutes.)

[fol. 11640] By the Court: You may proceed.

Q. Before you go on with this answer as to the reasons for the substitution of feeder-fed machines for Ball Brothers, I am going to interrupt and ask another question: what are the largest number of feeder-fed machines on any furnace at Ball Brothers Company, to your knowledge?

A. Eight.

Q. You spoke of six. Now, in speaking of six, that was the substitution for the 3 Owens?

A. On our No. 3 furnace.

The Court: That is, nine furnaces now since October, 1940?

The Witness: Eight.

Q. Tell His Honor how there happens to be only eight, because your chart will tell you.

A. In the year 1919 our No. 8 furnace was torn out and has not been replaced.

The Court: 1918?

The Witness: Yes, sir.

The Court: Now, the furnaces since October, 1940 these eight furnaces, have all supplied feeders and forming machines, is that correct?

The Witness: That is correct.

The Court: The Lynch forming machines operate on all of them?

The Witness: Not on all.

The Court: What other forming machines?

The Witness: Well, we have the Mooreshead forming machine, the Lynch, of course, the Ball machines, the I. S. [fol. 11641] machine, the JPM machine.

Q. That is a Lynch, isn't it?

A. Miller. Then we have a White Liner machine, and the same machine for producing glass lids.

Mr. McCallister: That is merely a press, Your Honor.

The Court: Now, what feeders supply those forming machines?

The Witness: I hesitate to answer that, because I am not very familiar with the types of feeders.

Q. Well, you had at first what we term the Ball-Macauley, the Ball-Macauley feeder?

A. Well, I have heard it called the Ball feeder.

Mr. McCallister: The next man can tell us about that.
The Court: All right.

Q. Now, will you continue your answer as to the reasons for the substitution, and I might bring you up to date that you brought out the greater flexibility of the forming machines, the six forming machines, over the three Owens suction machines. Will you proceed from that point?

A. Our production records show that we were unable to secure as great percent of production efficiency using the Owens suction machine operated with flint glass as we secured when we were operating these machines with softer green glass. The Owens suction machines required operators with peculiar skill, and in recent years we had operated the Owens suction machines seldom, so that we found it difficult to keep skilled operators for the operation of these [fol. 11642] machines. At the same time these Owens operators were not especially good in operating the feeder-fed machines on our other furnaces.

Q. So you could say it was also a matter of flexibility of manpower?

A. That is correct.

Q. Now, what about the question of molds, if there is a question concerning molds?

A. To my knowledge there was no question of molds.

Q. Well, I understood that with the varying types of machines it required a larger number of types of molds, where the Owens machines were included in your list of forming machines. I may be wrong.

A. I wouldn't say that.

Q. Now, you have spoken of flint glass. Is there anything on this chart which indicates the use of flint glass, and if so, what is it?

A. The pink lines indicate the operations using flint glass.

Q. And, just for the benefit of the record, will you generally note where the flint glass is shown, throughout the chart, and do that as briefly as you can?

A. The pink lines indicate that the flint glass was used in the early period from 1910 to 1920, principally in our No. 9 furnace, where we had hand gatherer operation; and then, beginning about that time, there was definite increase in flint production, due to change in the demand from green to flint glass. It was only in 1926 that we began operating, to any extent, flint glass, on our own machines.

[fol. 11643] Q. Now, take the period, for example, from 1931 to '35, and state generally how many furnaces were on flint glass throughout the major portion of that period?

A. There were five furnaces operating on flint glass during most of that period, as contrasted with one furnace on green glass.

Mr. McCallister: In order that I may not forget it, I offer the chart No. B-6077-A to E.

The Court: 6077-A to E, both inclusive?

Mr. McCallister: Both inclusive.

Mr. Apsey: If Your Honor please, I think it is a little premature; we have had no explanation of the graph on the bottom of the chart. I would object unless I knew what that would represent.

— McCallister: I will withhold the offer then. We are not greatly interested in that, but I will ask this man what it is.

Q. Will you tell me what the irregular line or lines on the various pages of this chart indicate?

A. The lower portion of a chart is designed to show the monthly average of employees during the period from 1910 to 1935, inclusive.

Q. And that is shown by which of these two lines, the black or the red?

A. It is shown by the black line. The red line shown on the chart from the period 1910 to 1915, in the columns 1912 to 1913, show the number of thousand tons of batch melted. That is also shown on the chart ending 1920 in [fol. 11644] the columns 1917 and 1918. These were charted just as a matter of information with reference to employment and the relationship, if any, between the batch melted and employment.

Q. Did you do that charting yourself?

A. Yes, sir.

Q. Will you make a statement as to the irregular lines below the columns '26, '27 and '28?

A. Yes. It also applies to the chart ending 1930 in columns 1926 and '27, the red line indicating thousand tons of batch melted.

Mr. Apsey: We have no objection to the admissibility of this chart.

Mr. McCallister: I renew the offer, then.

The Court: They may be admitted.

Q. What did the term "light weighting" mean to you?

A. The term "light weighting" as applied to production of glass containers, means the method of reducing the weight of glass, in the container, to the lowest point consistent with the demands made upon that container, and our ability to satisfactorily produce it.

Q. Lightweight ware. Does this matter of light weighting in any way directly concern you as production manager?

A. It does, because my job as production manager demands that I keep constantly in touch with the weight problems as to scheduling, so that we may secure the most efficient operation of our furnaces and machines.

Q. Well, what about molds and plungers?

[fol. 11645] A. I also issue all orders for the manufacture of new mold equipment, and I am partially responsible for the development of specifications for the ware to be manufactured.

Q. By "development" do you mean the preparation of the specifications, or the figuring out of the specifications?

A. I mean the figuring out of the specifications in connection with our mold design department.

The Court: Specifications that would regulate weight?

The Witness: Yes, sir.

The Court: Now, that weight regulation, is it the result of the consumers' demand or the creation of a consumers' demand?

The Witness: I understand that—I beg pardon. It is due to two things. The demand of the trade for a lighter weight container so as to save freight and to secure the ware at a lesser cost, and our desire to produce ware at a lighter weight because of our ability to increase production by so doing.

The Court: And there would be no re-use of that lighter weight material, as a rule?

The Witness: That is true in the lightest-weight ware. I think it is not true in, perhaps, fruit jars.

The Court: Or beer bottles?

The Witness: The one-trip beer bottle designed to be a one-use.

The Court: And milk bottles?

The Witness: Milk bottles we do not manufacture.

[fol. 11646] Q. Consequently you don't know anything about it?

A. No, I do not.

Q. From your own standpoint, from the standpoint of Ball Brothers Company, can you give an estimated date as to when light-weighting became important in your job, for example?

A. The light-weighting program at Ball Brothers began early in 1938.

Q. That was really when it first made its advent into your work?

A. Yes, sir.

Q. Now, do you know from your duties, the weights that Ball Brothers have reduced to in connection with fruit jars?

A. Yes, sir.

Q. You might give an example in connection with a quart jar, for example.

A. A round quart Mason jar was formerly made about 16½ ounces in weight, and we were able to reduce the weight to 14 ounces.

Q. Now, in packers' ware for a similar size container, what does the light-weighting mean there? And I am referring again to Ball Brothers' plant, of course.

A. Quart packers' jars are made of varying weights, depending on the design, but a round quart packer we were able to satisfactorily produce ware at 12 ounces.

Q. Do you know as a matter of your own knowledge that other manufacturers go below that weight as to packers' ware?

A. I have had jars in my possession that were 10 ounces in weight, but I do not know whether they were successfully [fol. 11647] continuously produced at that weight.

Q. Well, I didn't ask that question. Do your duties as production manager in any way involve the inspection of ware?

A. As production manager I have direct control of the inspection of ware in our Muncie Plant.

Q. In what way are you interested in inspection, that is

to say, how do you exercise that control? We will say it that way.

A. I exercise control over the quality of ware by special instructions to the head of the quality control department, and in personal conversations with him with reference to any specific ware to be produced.

Q. Now, what is the general practice, to your own knowledge, at Ball Brothers Company, as to the inspection of fruit jars?

A. Fruit jars are carefully inspected for distribution, appearance, and especially with reference to the sealing surfaces.

Q. Now, when you say they are carefully inspected with relation to distribution, what do you mean by that?

A. To make certain that the thickness of the glass is uniform throughout the body of the jar.

Q. Am I right in making the suggestion you should say "substantially uniform"?

A. Yes.

Q. In this matter of inspecting for sealing surfaces, how does the fruit jar, as made by Ball Brothers Company, differ from packers' ware?

A. In that in the inspection of fruit jars that we inspect [fol. 11648] both the sealing shoulder, to make certain that it is perfect, and also the top edge of the jar, to make certain that either edge would produce a hermetic seal of either of the types of glass, shoulder seal or the top seal.

[fol. 11649] Q. Now, going back again to this matter of substitution of feeder-fed machines for the Owens suction machines, what can you say,—or can you give me a definite statement that would indicate the increase of quantity of ware produced, for example, on furnace No. 3, before and after the substitution? Of course, I am not asking for absolutely accurate figures.

A. The production of ware on No. 3 furnace after the substitution of feeder-fed Lynch machines was increased approximately 50% over the operation of the same furnace with the Owens suction machine.

Q. Do your duties as production manager extend to any plants other than the plant at Muncie—any Ball Brothers' plant other than the Ball Brothers' plant at Muncie?

A. Partially to the branch plant at Okmulgee, Oklahoma, and Wichita Falls, Texas.

Q. Can you state how many Ball plants are operated today?

A. There are three plants operated today.

Q. And what are they?

A. Muncie, Indiana; Okmulgee, Oklahoma; and Wichita Falls, Texas.

Mr. McCallister: That is all.

Cross-examination.

By Mr. Apsey:

Q. Referring to these charts which I believe you said you prepared, I notice that they end in the year 1935. Did you prepare charts for any year subsequent to 1935?

A. No, sir.

Q. Why did you cease preparation of the charts at the end of '35?

A. It was because we had neglected to carry on further. [fol. 11650] Q. Well, I don't know just what you mean by that—neglected to carry on what?

A. The charts were not completed—weren't made for the years following 1935. It was for no special reason, simply that we haven't done it.

Mr. McCallister: You just neglected to do it; is that right?

The Witness: That is correct.

Q. Well, now, I notice referring to these charts—well, take the year 1917, you have over furnaces 2 and 3 the word "Bevo". What does that signify?

A. We made some amber bottles at that time that we called Bevo bottles.

Q. That doesn't refer to the type of machines being used on this furnace?

A. No, it does not.

Q. It just means at that time you made Bevo bottles, and does it show for how long a period you made Bevo bottles?

A. Beginning January 1st, 1917, to May, the middle of May, 1917, on No. 2 furnace, and beginning at the end of January, 1917, until almost the middle of May, 1917, on furnace No. 3.

Q. Well, that is the purpose of those dark red lines. I take it, on your chart?

A. Supposed to be brown for amber.

Q. Now, in '20 you have down there Ball machines and Miller telescopic—those Ball machines and Miller telescopic referred to there, refer to forming machines, I take it; is that right, not the feeder?

A. That is correct, the glass forming machines.

[fol. 11651] Q. But there was a Ball feeder—is that right? I think you testified, or some kind of feeder?

A. Yes, I have heard it called a Ball feeder.

* * * * * * *

Mr. Apsey:

Q. Well, do you know, Mr. Littler, whether the Hartford-Empire feeders were used at any time by Ball?

A. I do know that the Hartford feeder was used recently at our No. 2 plant.

Q. How recently?

A. In 1941.

[fol. 11652] Q. Is it still in use today?

A. I do not know.

Q. Do you know of any other Hartford feeder that has been used?

A. No, sir, I do not.

Q. And I think you testified that one Hartford former was used—the I. S. Machine?

A. Yes, sir.

Q. Is that all,—just that one?

A. I believe we have two of those.

Q. You have two of those?

A. Yes.

Q. Do you know when those were installed?

A. Not exactly.

Q. Approximately—can you give us the year?

A. Perhaps early in 1941.

Q. Early in '41?

A. Yes.

Q. Do you know of any other Hartford equipment that was used at the Ball Brothers plant before 1941?

A. No, sir, I do not.

Q. It is correct to say, then, that no Hartford equipment was installed in the Ball Brothers plant before the year 1941?

Mr. McCallister: I object to that question. That is not a proper question in the light of this witness's testimony.

The Court: I think so; I think I will sustain the objection.

Q. Now, I notice in the year 1930 on the chart you have again Ball machines; those are forming machines referred to there?

A. Yes, sir.

[fol. 11653] Q. And in 1932 and '34 you referred to JPM Machines; those are forming machines, too, are they not?

A. That is correct, yes, sir.

Q. Now, you testified as to the reason why you abandoned the use of the Owens machines, and am I correctly stating your testimony in general that the purpose for abandoning it was that in order to have sufficient flexibility to make it economical to use the Owens machine you have to stick pretty closely to one type of ware?

A. During the operating period; I mean by that that if you are operating on a twelve day period, it would be most economical to continue a given machine on one type of ware until the shutdown period.

Q. And that is because the Owens machine works economically only when producing ware in larger quantities?

A. Yes, sir.

Q. What quantity of ware would you have to produce to make the operation of the Owens machine economical?

A. Where there is in excess of 1,000 gross.

Q. Well, over what period of time would that be?

A. Well, a period of a minimum of six days.

Q. That is, a thousand gross per a six day period of operation?

A. Yes.

Q. That is per furnace, too, isn't it—a thousand gross per furnace per week would be about the margin line?

A. Per machine.

Q. How many Owens machines—did you use more than one Owens machine on one furnace?

A. We used three machines.

* * * * * * *

[fol. 11654] Q. It is your experience then that it would not be economical to use the Owens machine to produce more than 1,000 gross—approximately 1,000 gross of ware per week per machine; is that right?

Mr. McCallister: Now, I think that question is a faulty question because, as I have understood the witness, he is indicating that there is a minimum, and not a maximum. In other words, he is indicating that it is a mass production machine, and your question indicates that it would not be effective in producing more than so much ware.

Mr. Schaeffer: I think you have got it turned around. It should be less.

Mr. Apsey: Well, if I said that, I made a mistake—I should have said less.

(Last question read.)

[fol. 11655] Mr. Apsey: That should be less, instead of more.

A. That is correct.

Q. And do you know of any company in the industry which produces more than a thousand gross—that is, a production of fruit jars sufficient to be able to use Owens machines under that capacity which you speak of?

• • • • • • •

A. No, sir, I do not.

Q. What is the least number of Owens machines that can be used economically with one furnace?

A. I would not know. We installed three of the ten-arm machines. That was our unit for years.

Q. Well, did you consider whether it would have been economical to use one or two machines rather than three with a single furnace?

A. No, I wouldn't know.

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[fol. 11656] Q. Well, do you have any personal knowledge as to the problems of installing Owens machines at your factories?

A. No.

• • • • • • •

Q. How early did packers' ware jars begin to be made at Ball Brothers of the lighter weight than the fruit jars?

A. I don't know.

Q. It would have been subsequent to 1938, however, I take it?

A. I think that is correct.

[fol. 11657] Q. You have no more definite recollection?

A. No, I haven't.

Mr. Apsey: No further questions, Your Honor.

The Court: Anything on re-direct examination?

Mr. McCallister: I want to ask you one question, or a couple questions, on re-direct.

Re-direct examination.

By Mr. McCallister:

Q. Why was any particular notice given to this matter of Bevo bottles on your chart, if you recall?

A. It was recorded as an historical fact, that we manufactured them.

Q. For whom?

A. I don't know.

Q. Well, what was the Owens machine usually used for throughout that period—what type of ware was manufactured on the Owens machine during the period that these Bevo bottles are noted as manufactured?

A. Fruit jars.

Q. Anything else?

A. No, sir.

Q. And would I be correct in saying that that departure from the usual practice occasioned the noting of it on your chart?

A. It had no particular significance with reference to this chart. We were simply recording the history, and that was the only purpose of this chart.

Q. Well, the chart does not show all the various types of ware that were manufactured throughout that time, does it?

A. No, it doesn't. This was a change from the green to [fol. 11658] the amber glass, and to explain the presence of that in that period we marked it Bevo.

Q. Well, I was trying to get at some reason for it. Now, in connection with this substitution of Owens suction machine for feeder-fed machines—will you go into the question a little more particularly as to the result of the shut-down period for the purpose of changing molds on the Owens machine and by a similar period for the purpose of chang-

ing molds on the feeder-fed machine, and take the differences involved?

A. It was our practice at Ball Brothers to schedule a continuous run of a given product or given jar, on the Owens machine, so that the change from one type to another could be made on the down period; but it was our practice on those furnaces equipped with feeder-fed machines to schedule the long runs if we had them, and make short runs where we would change the production time, because we could do it quickly and get back in satisfactory operation.

Q. Well, now, when you change over a feeder-fed machine, how much is the furnace incapacitated as a producing unit?

A. Approximately one-sixth of the furnace capacity.

Q. Now, when you change over during the production time an Owens machine, approximately how much of the furnace is incapacitated as a production unit in the plant?

A. One-third of the capacity of the furnace.

Q. Would that situation have anything to do with your varying the schedule so that change-overs would not occur on the Owens machine during production periods?

A. It would.

[fol. 11659] Q. And is that one of the reasons why it would be uneconomical to operate an Owens machine, for example, on short runs?

A. Yes.

Q. And that goes into the question of the number of gross that might be economically employed, and that is the only reason that the number of gross comes in, isn't it?

A. Yes, sir.

Mr. McCallister: That is all, Your Honor.

Examination.

By Mr. Williams:

Q. How many hours during each — do you operate your machines at the Ball plant?

A. Twenty-four hours a day.

Q. You spoke of the productivity of those Owens machines. As of what time was that—in what years?

A. I have in mind the recent years.

Q. When were those Owens machines installed in the Ball plant, do you know?

A. The first Owens suction machines were installed in 1910.

Q. And those were the machines that you were still using, or some of them, in 1940?

A. I think not. There was a change from the original type of machine to a different type.

Q. Well, was that prior to the time you became production manager in 1925, or subsequent to that time?

A. Prior to the time that I became production manager.

Q. Do you know what types of machines they were, whether the A machine, the AE, AD, or AN—do you happen to remember which they were?

A. No, I wouldn't know.

Mr. Williams: That is all; thank you.

[fol. 11660] The Court: Anything on re-cross examination?

Mr. Apsey: No further questions.

The Court: That will be all, Mr. Littler.

Call the next witness.

Thereupon the Defendant Ball Brothers Company, further to maintain the issues upon its part, called as a witness,

Edwin E. Milner, who, having been first duly sworn, testified as follows:

Direct examination.

By Mr. McCallister:

Q. Will you give your name and your present residence?

A. Edwin Earl Milner, Muncie, Indiana.

Q. By whom are you now employed?

A. By the Ball Brothers Company.

Q. How long have you been employed by that company?

A. Since the Fall of 1922.

Q. In what capacity are you employed?

A. As plant engineer.

Q. And are your duties as plant engineer concerned only with Ball Brothers' plant at Muncie, or do they extend beyond that plant?

A. It includes all of the plants.

Q. How long have you been, either directly or indirectly, interested in glass plants, from the standpoint of employment?

A. Since 1905-1906.

Q. And will you amplify that answer a little further—you were first employed in a glass plant in 1905 or '6?

A. My first employment in a glass plant was in 1905-06, at the plant of the Acme Glass Company, of Steubenville, Ohio. At that time my father was a glass worker.

[fol. 11661] Q. And you got a job in the plant?

A. I got a job in the plant as a boy.

Q. Now, will you outline, but more or less briefly, your background which led up to your being selected as plant engineer at the Ball Brothers Company. Where were you employed, for example, after your earliest employment in a glass factory?

A. Well, I was first employed in Steubenville with the Acme, and I spent, oh, odd periods in the Acme plant up until about 1909. At that time I was employed by the Ohio Valley Clay Company. The Ohio Valley Clay Company was at that time owned by the same owners as Acme Glass Company—McGill Brothers. I was employed there as the payroll clerk, to start with.

Q. Well, I don't want that detail, but what did they make?

A. They made tank blocks and refractories for glass plants.

[fol. 11662] Q. Then during your employment there you were finally doing what?

A. I finally was helping the sales manager and the engineer. They had an engineer in that plant who was also the sales manager.

Q. How long did that employment last?

A. Until 1913.

Q. And then what?

A. In '13 I applied for a position with H. L. Dixon Company in Pittsburgh, and was employed there as a draftsman.

Q. Who was H. L. Dixon?

A. H. L. Dixon was a furnace builder and contractor, engineer. He was pretty well known in the glass business in that period, probably the leading glass contractor.

Q. How long were you employed by H. L. Dixon?

A. From 1913 to 1922.

Q. Will you give me briefly an outline of some of your duties at the H. L. Dixon Company during the time of your employment?

A. Well, my first work, of course, was rather elementary. I think my early duties was a tracer. I finally got to be a

draftsman and eventually I worked myself to the position of assistant chief engineer at the time I was employed as assistant chief engineer.

Q. Speak a little louder.

A. At the time I was working with Mr. Lytle, who was chief engineer, I was also placed in charge of a great deal of construction work there with work such as furnace, lehrs, producers, etc.

[fol. 11663] Q. Will you outline generally some of the work you did in construction work, where you worked, etc.?

A. I think I worked in most of the glass plants east of the Mississippi River at some time or other, like Corning Glass Works, Lockport, J. T. & A. Hamilton, Bausch & Laumb Optical, Hazel-Atlas,—probably too numerous to mention,—but all the large plants who were producing containers, flat glass, window glass, light globes, light bulbs,—General Electric, etc.

Q. Your work was in installation of what?

A. Furnace lehrs, gas producers and other equipment serving machines and feeders.

Q. Are there any instances where you had charge of the building of an entire plant, for example?

A. Yes. The one, I would say, complete plant, was at the Bureau of Standards at Washington, D. C.

Q. When was that?

A. That was in 1918.

Q. What were they preparing to manufacture, if you know?

A. They were preparing to manufacture optical goods.

Q. When you came to Ball Brothers Company were you familiar with the operation and the design and construction of glass forming machinery for such ware as containers?

A. Yes, I was.

Q. Where did you obtain that information, or knowledge?

A. Well, during my work with the Dixon Company I spent, of course, quite a bit of time in plants that used that kind of equipment,—Hazel-Atlas Glass Company at that time were using Owens. Lockport Glass Company had in-

[fol. 11664] stalled Hartford equipment. J. T. & A. Hamilton at that time were using Hartford equipment.

Q. And you had an interest in all that various equipment?

A. Yes.

Q. Some interest in all that various equipment?

A. That is right.

Q. What were you employed to do at Ball Brothers Company in 1922?

A. Well, in 1922 I was hired principally to work on furnaces, remodeling of furnaces to increase their efficiency, and installation of gas producers, lehrs, and other plant equipment. My work was specifically, at that time, to cover only glass-making equipment.

Q. Do you recall what your first assignment was at Ball Brothers Company?

A. The first assignment that I had was rebuilding No. 3 furnace at No. 2 Plant, which had been torn down about two months previous to the time I was employed there.

Q. Tell us what you mean by gas producer, just briefly, so that we are not using words that are wholly unintelligible to most of us.

A. A gas producer is a machine for converting coal into raw gas for heating furnaces. It is a matter of distillation of the gas from coal.

Q. At the time you went to Ball Brothers Company, what kind of forming machines, generally speaking, were in use there; I don't want you to go into detail, but I want you to give the types.

[fol. 11665] A. In 1922 Ball Brothers were operating Owens suction machines. They were operating some flow machines,—that is, stream flow. They were also operating some needle feeders—feeder-fed forming machine operated from the needle feeder.

Q. Will you, for the purpose of connection, give us your understanding of what an Owens suction machine is, briefly?

A. Well, the Owens suction machine is a continuously rotating machine fitted with blank molds and plungers and blow molds and associated with the revolving pot. The glass from the furnace flows by gravity into the revolving pot and the machine is rotated in synchronism with the revolving pot. As the blank molds pass over the opening provided by the jack arch, they dip into the glass and take their charge by suction. This charge of glass is produced by vacuum, which is admitted around the plunger, neck ring and the blank mold.

Q. I am interested to know it is a vacuum charge that goes into the machine?

A. The blank is charged by suction.

Q. Did you name the crude form of feeder that was used at Ball Brothers when you got there? I don't remember—did you give it a name just now?

A. It was the Kirk. We called it the Kirk feeder. I don't know that there was a name, particularly, except the man that did most of the work on it was called Kirk and consequently we called it the Kirk feeder.

Q. I just wanted the name for reference. Will you briefly describe this Kirk feeder that you found at Ball Brothers [fol. 11666] in 1922 when you became plant manager of that company?

A. Well, the Kirk feeder consisted of a short forehearth, as we call it, or in those days they called it a "boot". That was a refractory line, metal casing, attached to the refining end of the furnace. It had an orifice in the bottom of it so the molten glass could flow through the orifice.

Q. That was really an extension to the refining end?

A. Yes. It was extended in such a way so the machine could be placed under the orifice in the feeder.

Q. By the machine,—you mean forming feeder?

A. Yes; and the clay needle, or plunger, was caused to reciprocate by an air cylinder and walking beam.

Q. And the plunger projected how?

A. The plunger projected from the outer portion of the superstructure into the glass to the orifice. That clay plunger was pointed on the end as usual and it was crude in the sense it was operated by an air cylinder attached to the side of the feeder through a lever arm in a walking beam that caused it to reciprocate and alternately produce charges of glass and retard the glass on the upstroke. Directly under the orifice was placed a set of shears, which at that time were water-cooled—water-cooled blade shears—and they were used to sever the glass as it was projected through the orifice.

Mr. Apsey: If Your Honor please, I can't at present see the relevancy of this. I might ask counsel what he is getting at. It seems to me he is taking up a lot of time.

[fol. 11667] The Court: I assume counsel has some point he is getting at. The details of the machines may be eliminated.

Mr. McCallister: What I am getting at,—and I am very glad to apprise both the Court and Mr. Apsey of our plans or ideas,—is this: Ball Brothers were, in their own minds

at least, compelled finally to change from one type of feeder to another because of threats of infringement, and they finally produced the machine which we will finally get to. Now, it is possible we may be taking too much time to get to that final machine, but at any rate we are giving the history of Ball Brothers' changes in feeders and we will try to show the changes were made because of the belief on the part of Ball Brothers that they would be sued if they did not make changes.

Mr. Apsey: Of course, if Your Honor please, we would like to have our continuing objection along this line to make sure it is not offered to show any question of validity or infringement. If it is merely offered for state of mind——

Mr. McCallister: I will say now I agree with Mr. Apsey on infringement. It is offered to show the state of mind. I don't know what a valid patent is and the courts determine the question of infringement, so we are not going to assume the functions of a court, or attempt to, in trying to determine whether these patents are valid or infringed. We are merely showing the state of mind of Ball Brothers.

The Court: Proceed.

[fol. 11668] Mr. Apsey: With that understanding, there is no objection.

Q. What other essential equipment was on that early Kirk feeder? You have mentioned the plunger working over the orifice and you have also mentioned the shears. Now was there any other essential piece of equipment involved?

A. Well, the forehearth was fitted with the necessary gas burners to keep the glass in a liquid state.

Q. How were the shears operated with relation to the time of operation of the plunger?

A. The shears and the operation of the air cylinder which in turn operated the plunger were controlled by what we call a timer, which also controlled the starting cycle of the machine.

Q. Now, in connection with your work at Ball Brothers, what was your first work there which brought you in direct contact with this Kirk feeder?

A. My first work in connection with glass feeders was in 1922.

Q. What was it, what designing were you doing in 1922?

A. I was assigned to remodel our old Miller telescopic machine, which at that time was a semi-automatic machine,

air-driven, and the molds were opened and closed by hand. They were charged by the needle feeder.

Q. It was a forming machine then?

A. It was a forming machine, but at that time it wasn't one that made a very good fruit jar, and I was assigned the job of remodeling that machine to improve the quality of the ware, to include quite a few mechanical devices for [fol. 11669] operating it. That, of course, involved also work in connection with the feeder, because it was a feeder-fed machine.

Q. Was your remodeling of this—I believe you called it the Miller telescopic forming machine—a successful undertaking on your part?

A. Yes, it was.

Q. What did the success in connection with that machine result in?

A. That led to the complete design and construction of a new line of machines which were called the Ball machines, which was a little larger in size, carried the same number of molds, the same general type of molds, but the table was larger and there were other improvements involved in the second machine known as the Ball machine.

Q. Was it a feeder or forming machine?

A. It was a forming machine.

Q. After you remodeled this Miller telescopic machine, what name was it known by in the plant of Ball Brothers?

A. We called it the remodeled Miller machine until after we built the Ball machine. After that it was convenient to call the remodeled Miller the Small Ball and the new machine the Large Ball, because they were very similar in their operation and very similar in shape.

Q. Now in connection with the Large Ball machine, how was it served with glass?

A. The Large Ball machine?

Q. Yes.

A. With a feeder.

Q. Did that factor suggest or occasion any changes in the [fol. 11670] construction of the so-called Kirk feeder?

A. Yes, it did.

Q. Tell us about it briefly.

A. Well, I would say the Kirk feeder, as I tried to indicate, was a crude device. There was a lot of lost motion in it and we had quite a bit of trouble with cold front and unequal temperature. The use of the full automatic fea-

tures on the remodeled Miller machine called for further improvements in the feeder, because we were unable to get the full advantages from the remodeled machine until we were able to produce a better gob. Consequently we spent considerable time in designing and building alterations to this feeder. Finally we gave up and built a complete feeder. That was in 1924. That, again, was called Model 24, type "K" feeder. We designated it as a "K" feeder because it worked with the new Ball machine which had previously been fed by the Kirk feeder.

Q. You used the term "gobs" in connection with that feeder. Was it what is known as a gob feeder?

A. Certainly.

Q. Tell us what that means, so we can connect it.

A. A gob feeder is a feeder that produces glass and charges the size of a gob and the shape of a gob.

Q. Where?

A. Extending from the feeder by means of sending the glass through an orifice and cutting off in gobs.

Q. When they are cut off what do they do?

A. They drop into a blank mold on forming machines.

Q. I interrupted you?

[fol. 11671] A. It is not a stream feed; it is not a flow feed; it is a gob feed.

Q. You speak of the term fruit jar. How would you class a fruit jar, as an engineer?

A. A fruit jar is a wide mouth container used for preserving fruit.

Q. Well, there are other wide mouth containers, and if so what are they usually known as?

A. All kinds of packers ware, such as pickle jars, peanut butter, mayonnaise.

[fol. 11672] Q. These Ball machines, and this large and small Ball machine, were they patented machines, if you know?

A. No.

Q. What type of machines were they?

A. Commonly called press and blow machines.

Q. And that distinguishes them from what other types of machine?

A. Oh, from the suction machine or from the blow and blow, or any other type that would not be a press and blow.

Q. Will you please briefly outline to us by reference to operation, what a press and blow machine is? In the first place, it is a forming machine?

A. It is a forming machine for forming glass containers in which the molds are fed from the feeder, preferably fed by a feeder which would produce a gob of glass. The first operation is the pressing operation. The second operation is the blowing operation. That is why they call it a "press and blow". The pressing operation consists of pre-forming what is known as a parison, or blank, as frequently referred to. That pre-forming consists of exerting a downward pressure with a plunger from a suitable power cylinder, which forces the glass upward around the plunger into the neck ring under the flow ring, to form the finish on the top, or as we call it the finish, the screw threads, and so on.

Q. You have left me confused already. In what position is the mold when it receives this charge of glass from the feeder?

A. Usually it is directly under the feeder orifice, and in [fol. 11673] line with the feeder orifice.

Q. And its open end——

A. The top of the blank mold, as we call it, is open to receive the charge. The bottom of it is closed, and in most cases the blank molds, due to the fact that a great deal of pressure is applied through the plunger, are made solid. In other words, the usual blow mold is made in half; the blank mold is made solid.

Q. For the press and blow machine?

A. For the purpose of pressing, resisting the pressure of the plunger.

Q. You have spoken of the neck ring. Tell us about that. Where was it located and what function did it play?

A. Well, the neck ring usually, naturally forms the closure or the mouth by which the jar is covered with the cap. It also forms a part of the blank mold assembly when the blank is in contact with it, and it usually supports the parison while the blank mold is withdrawn and the follow mold is closed around it.

Q. All right, and am I right in saying that at the time of receiving the charge the neck ring is aligned with the blank mold and in effect occasions an extension of the mold cavity of the blank mold?

A. That is true.

Mr. Apsey: If Your Honor please, it seems we are getting into a great deal of detail on this matter. I think most of this has been brought out with other witnesses. I am not anxious to raise the point, but it seems to me we should get along. It is not relevant to relate all the details. He has [fol. 11674] reached the point which Mr. McCallister wishes to bring out.

The Court: Well, he may proceed.

Q. Then after the pressure plunger has moved down into the blank mold and through the neck ring, and has pressed the parison, it is withdrawn, and then what happens?

A. The blank mold—usually a bottom plate is pushed in under the parison.

Q. First the blank mold is removed from the parison?

A. The blank mold, in most cases, drops away from the parison. The bottom plate is caused to be moved in under the parison, and the blow mold closes around the parison and the bottom plate, maintaining the alignment of the bottom and the two halves of the blow mold. And the next stage is the blow stage, where the article is blown to fit the inside contour of the blow mold.

Q. Now, what type of ware is ordinarily made on the press and blow machine?

A. The wide mouth.

Q. Could narrow-mouth ware be made on that?

A. No.

Q. On the press and blow?

A. No.

Q. What do you mean by "narrow-neck", or am I using the term correctly?

A. Well, a narrow-mouth or a narrow-neck ware usually applies to bottles or other containers or the like, in which the neck is small in relation to the size of the body of the container, so it is termed "small neck".

[fol. 11675] Q. And for that reason, narrow-neck ware could not be made on the press and blow?

A. No, you couldn't get a plunger in a narrow neck to form a parison. The parison on a narrow neck machine is blown; it is not pressed.

Q. What other machine, what other types of machines are or can be employed in the manufacture of wide mouth ware?

A. Well, there are narrow-neck machines that are used for producing wide mouth ware, for instance the Lynch machine.

Q. That is the blow and blow?

A. That is a blow and blow. Now, we also manufactured, of course, the wide mouth ware on the Owens suction machines, all three of those machines are capable of making wide mouth ware.

Q. Now, you have spoken of reconstructing the Kirk feeder for the purpose of improving its operations in connection with these Ball machines. When was that reconstruction completed, if you know?

A. The reconstruction of the feeder or the machine?

Q. The feeder.

A. Well, we never completed the reconstruction of the feeder. We worked on the Kirk feeder and developed that as far as we could go, then we rebuilt it and made the type "K", and finally, after moving that machine from the No. 1 plant over to No. 3, we rebuilt the feeder again. We have four or five different feeders, all of the same general type,—each one is an improvement.

[fol. 11676] Q. Well, about what was the period, what was the time of this final rebuilding you have just spoken of?

A. I don't quite understand your question.

Q. You said you fully reconstructed the Kirk feeder. Now, when was that?

A. That was in 1922, '23, '24, '25, on up to '27 and '28. We did a lot of things to the Kirk feeder. We put automatic temperature controls on it and did a lot of work on it during the period of experimentation or development.

Q. What did this reconstruction you spoke of—cold nose—and you spoke of reconstructing the Kirk feeder—now, why did you reconstruct it originally?

A. To produce better, more uniform charges of glass.

Q. And what did you do to accomplish that, generally? I don't want a detailed statement.

A. What did we do? Finally, as I say, we rebuilt the feeder and took out the old operating mechanism that was obsolete, and put on new direct-connected air cylinders to give us better control over the plunger, put on automatic gas firing, and so on, and controlled the temperature.

Q. Did you do anything to control the temperature in the feeder and to overcome this matter of cold front?

A. Yes, we built dams in the feeder, insulated the sidewalls, insulated the bottom, insulated the bushing, and made every effort to get a very uniform gob of glass.

The Court: I think you may suspend at that point. We will recess court until 1:45 p. m.

(Noon Recess.)

[fol. 11677] (1:45 P. M., Monday, January 19, 1942.)

Mr. McCallister: Your Honor, I learned at noontime one of my waiting witnesses has sickness at home, and he would like very much to be put on at this time.

The Court: Very well; you may do that.

Mr. McCallister: So if we may interrupt the other witness.

Thereupon, the Defendant Ball Brothers Company called as a witness, George E. Myers, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. McCallister:

Q. Will you state your name and your present residence?

A. George E. Myers, Muncie, Indiana.

Q. Where are you employed in Muncie?

A. Ball Brothers Company.

Q. What are you, if you are a professional man?

A. I am comptroller of Ball Brothers Company.

Q. That is your present position, but I say what are you from the standpoint of profession?

A. Accountant.

Q. Certified public accountant?

A. Not certified.

Q. How long have you been employed by Ball Brothers Company?

A. Since March 1st, 1922.

Q. How long have you been employed in your present position of comptroller?

A. About the last ten years.

[fol. 11678] Q. Will you generally outline your duties at Ball Brothers Company as comptroller?

A. As comptroller, I have charge of the general accounting, the cost accounting, the cost engineering department, the tax department, Federal, State and local, and I am a member of the Finance Committee of the Company.

Q. What are your duties involved, for example as comptroller and member of the Finance Committee?

A. The Finance Committee of the Company has to do with the operation of the plant as to available cash. It is part of our duty to see that there is proper financing there for our payrolls and purchase of raw material and other operation.

Q. Is there anything in the products of Ball Brothers Company which creates an unusual condition from this financing standpoint?

A. Yes. The production and sale of fruit jars.

Q. Will you go into this more generally?

A. Well, of course machines, proper machines, high production and low cost, is important in the manufacture of fruit jars the same as with any other company, but fruit jars do present two problems having to do with the financing of the company. One is the matter of weather, which enters into our production planning and sales, and the other is the matter of consigning stock to our jobbers and wholesalers.

Q. Can you exemplify your last statement by reference to transactions in any particular year?

A. Yes. I have prepared statements covering three years, 1936, 1937 and 1938, covering our inventories by months, our production, shipments, and billings.

[fol. 11679] Q. I show you three papers which have been marked for identification as B-6078, B-6079, and B-6080, and ask you to state what they are?

A. This B-6078 is a monthly statement of inventory, production and billings of domestic jars, otherwise known as fruit jars, for the year 1936.

B-6079 is the same thing for the year 1937, and B-6080 is the same information for the year 1938.

Q. Are those the papers to which you have just referred as being prepared by you?

A. Those are the papers, yes.

Q. Now, using the data—at first, will you explain the data on these three papers, 6078, 6079, and 6080?

A. The first column on this marked "regular" means regular inventory, that is quantity and gross of fruit jars

on hand according to our records in the different months of the year. The second column marked "consigned" is the quantity of jars on consignment for each month during the year. The third column has a total of the first two columns. The fourth column, marked "production" is the production of fruit jars by months during the year, and the column marked "shipments" represents shipments for each month during the year, and the column marked "billings" is the quantity billed, all of them having reference to fruit jars.

Q. All of them also have reference to fruit jars on consignment, do they not?

A. All of the columns have reference to fruit jars, the consigned jars, regular, production, shipment and billings.

[fol. 11680] Q. Will you state whether these figures are round numbers or definite, accurate figures?

A. The figures shown on—the typed figures shown on this report are definite, accurate figures, with the one exception of the column of consigned stock. We do not have an exact per gross record monthly of consigned stock, and that figure is arrived at by taking the actual inventory on the first of the year, plus the shipments and less the billing for each month, creating the monthly figure on consignment, which is substantially correct.

Q. Now, will you use these exhibits or these papers to exemplify your former statement as to the fruit jar business at Ball Brothers Company?

A. It will be noticed that for the year 1936 the low quantity of inventory was in January, 818,000 gross. That inventory has an approximate value of $3,200,000. The peak inventory for that year was in July, with 1,026,000 gross, having an approximate value of $4,100,000. The average for that year, the average inventory per month, was 912,000 gross, having an approximate value of $3,648,000.

Mr. Apsey: Where is he getting the dollar figure from?

Q. Will you explain where you are getting your average value?

A. That is the quantity multiplied by $4.00.

Mr. Apsey: $4.00 a gross?

A. Yes.

Mr. Apsey: That is not in this exhibit. That is your calculation?

[fol. 11681] A. That is not on the typed sheet. Now, the column covering production it will be noted that the low

production in the year 1936, 11,700 gross, was in September, while the high production of some 80,200 gross was in May of that particular year. The low figure on shipments of 2,286 gross was in December, while the high shipments of 108,000 gross was in June. On billings the low figure was in February, 5,999 gross, the low figure rather, while the high figure was in September, with 63,900 gross. This also shows that our billings for the year 1936 were 396,000 gross against an average inventory of 912,000 gross, or less than one-half of one turn-over of our inventory in that particular year.

Now, 1937, there the low inventory was in November, 606,000 gross, having an approximate value of $2,400,000. Our high inventory was in March, 886,000 gross, having an approximate value of $3,500,000. The average inventory for the year was 704,000 gross, having an approximate value of $2,900,000. The low production figure for 1937 was in April, with 3,992 gross, while the high figure was in August with 106,000 gross. In shipments in that year the low month was November, with 1,434 gross, while the high figure was in August with 216,000 gross. On billings, the low figure was in January of 10,746 gross, while the high figure was in March with 163,000 gross. In that year our total billings were 735,000 against an average inventory of 740,000, or just one turnover of our inventory.

In the year 1938 the low inventory was in December, 551,000 gross, having an approximate value of $2,200,000. The high inventory was in July with 754,000 gross, having an approximate value of $3,000,000. Our production, [fol. 11682] the low figure in that year was in October with 6,910 gross, while the high figure was in June with 54,360 gross. Shipments, the low figure was in December with 1,216 gross, while the high shipments were in July with 141,000 gross. On billings, the low figure was in March, 2,754 gross, while the high figure was in August with 111,000 gross. The total shipments for that year were 430,000 gross against an average inventory of 665,000 gross, or a turn of two-thirds of the inventory.

Now, those three years will average 772,000 gross of inventory against an average sales figure of 512,000 gross, or an average turnover of two-thirds of one turn of the inventory on a three-year average basis.

Q. Now, you have used the term one-half turnover and two-thirds, and one complete turnover. Will you compare

that generally with the turnover in other lines of production, from your own definite knowledge, or from your information as you have gained as an accountant?

A. Using Ball Brothers' own figures, this average of two-thirds compared to other lines running from one and a quarter up to six or seven turns, and we have one line of production, straw paper, that has turned in three years an average of thirty-eight times. So you can see just what the difference is in the two-thirds turn against anywhere from one and a quarter to seven or eight turns on our other lines of inventory.

Q. Now, am I right as a layman in interpreting this to mean that inventory is in effect investment?

[fol. 11683] A. Inventory is very definitely investment. These figures will indicate that the value of the low inventory in December of 1938 of some $2,200,000 against the value of the highest inventory in July of 1936 of $4,100,000, nearly double in the high and low of that three-year period.

Q. So that the necessity for these large inventories is actually involved as a matter of financing; is that correct?

A. Very definitely.

Q. Can you give us a comparison of this matter of turnover on fruit jars with packers' ware, for example?

A. Our packers' ware turnover has been between four and five times during this same three-year period against the two-thirds turnover on fruit jars.

Q. Will you state how you happened to select these three particular years?

A. 1937 is the year that is used by the government in the complaint. We felt that a three-year average was much more representative rather than just the single year, so that we use 1936, '7 and '8, one year before and one year following.

Q. Would you say they were all typical years?

A. Yes, I think so. I think these three years are a fair average of our business in that period of time.

Q. Now, in connection with this $4.00 that you used in estimating values; how did you arrive at that?

A. Well, due to the pressure of time, it was impossible to take a detailed inventory and work it out monthly for a three-year period. We used the average cost of sales for these actual three years, and it worked out to an average cost of $3.91, or rather, that was the average of the in-

[fol. 11684] ventory at the end of each of these years. The

average sales cost during that time worked out to $3.86, plus approximately $1.25 of undistributed overhead, which would have run the actual cost of production about $5.00. We used $4.00 as being a very low average figures.

Q. Were you in court this morning when Mr. Ball was asked about figures on costs?

A. Yes, sir, I was.

Q. Are you prepared to give such figures at this time?

A. No, I am not.

Q. As comptroller, do you know anything about royalty payments made by Ball Brothers Company to other companies?

A. Yes, my memory is working on it—some knowledge of it.

Q. Well, since, we will say 1930, to whom have Ball Brothers paid royalties in connection with a patented product or patented machines or patented methods?

A. To the Owens until—pardon me, the early part of 1933, and——

Q. Hartford-Empire Company?

A. I was going to say Hartford—Hazel is always in my mind—Hartford-Empire.

Q. Since when?

A. Since 1933.

Q. To date?

A. It was either May or June of 1933 when we made the first payment.

Q. And to date?

[fol. 11685] A. And to date, yes, sir.

Q. And when, if you recall, was the last payment made to Owens—and when you say Owens, do you mean Owens-Illinois?

A. Yes.

Q. And when was the last payment of royalty made to Owens-Illinois, from your recollection, and I assume that you——

A. September of 1933.

Q. And have you any explanation as to why it was in September rather than June of 1933——

A. I have not.

Q. —which I will state was the date that the Owens agreement terminated, or the Owens license?

A. I am speaking from memory, and that is my recollection.

Q. I see; you have no other explanation of it?
A. No.

Mr. McCallister: That is all, Your Honor.
May I offer first the documents which have heretofore been marked as Exhibits B-6076, 6079 and 6080?
Mr. Apsey: No objection.
The Court: They may be admitted.
Any questions by any other defendants? Cross examine.

Cross-examination.

By Mr. Apsey:

Q. Mr. Myers, you said you were not in a position at the present time to give any figures relative to the relative selling expenses on fruit jars and packers' ware?
A. That is right.
Q. Can you prepare for us some statement in regard to that and let us have it some time this week?
[fol. 11686] A. Yes, I think we can get it to you this week.

Mr. Apsey: If you will do that, we will greatly appreciate it.
Mr. McCallister: May I interrupt you—I have just been reminded, and I am going to remind the witness, if I may, of an inaccuracy. I understand that Ball Brothers Company is paying royalties to the Solar Laboratory; is that correct?
The Witness: Oh, yes, that is right.
Mr. McCallister: I wanted to get that in so Mr. Apsey could use it if he wanted to.

Mr. Apsey (Continuing Cross Examination.)

Q. Now, I direct your attention to an exhibit in this case which is numbered Exhibit 1576, a stipulation with Ball Brothers, and I wish to direct your attention to schedule 6 in that Stipulation, which is Jar and Jelly shipments during the years 1933 to '39, inclusive, two pages, and I note some discrepancy in the column "Gross Jars shipped" in that Schedule 6 for the years 1936 and '37 from the figures that are given in your compilations here, Exhibits B-6078 and 6079. You will notice that in 1936 the gross jars are given in the stipulation, which is Exhibit 1576, as amounting to 434,124, and the same figure on your Exhibit B-6078 is

405,805. I want to ask you if you can account for that discrepancy, and if so, how?

A. The only explanation I would have of that is that the figures here include Wichita Falls. These figures do not, in any comparison.

Q. You mean the figures in the stipulation, Exhibit 1576, [fol. 11687] include Wichita Falls?

A. That is correct; at least, that must be the discrepancy.

Q. Now, Wichita Falls is one of Ball Brothers' plants, is it?

A. A subsidiary, yes.

Q. Why was that not included in your statement B-6078?

A. Perhaps we failed to get proper instructions on that. I ask to have those figures for Ball Brothers Company, and the accountant preparing them probably missed getting Wichita Falls in. However, we will be glad to check on that and see if that is the difference.

Q. Well, just for the sake of keeping the record straight, we would appreciate if you would check and see if that is the reason, because we would like to be sure that we have the right figures in; and the same applies for the year 1937, where the figures on Exhibit 1576 are 694,880 against 672,373.

A. I will certainly check it.

Q. Alright. It is a fact, is it not, that in the year 1936 the fruit jar shipments were the lowest from Ball Brothers for any year between 1933 and '39?

A. Yes, that is right.

Q. So you would not call that a typical figure, would you?

A. 1937 wouldn't be a typical figure, either, as compared with 1936 or '38.

Q. In 1937—that was the highest year at any time from 1933 to '39; isn't that right?

A. Yes, that is right. That is the reason we have used the average figure of three years.

* * * * * * *

[fol. 11688] Examination.

By Mr. Middleton:

Q. This question does not relate particularly to accounting, but perhaps you can answer it, with the Court's permission. Ball Brothers' factory itself manufactures the

rubber rings that go with the Ball Brothers' domestic fruit jars, do they not?

A. Yes, sir.

Q. And they have this rubber factory right in the plant as a part of the Ball Brothers' plant?

A. Yes.

Q. And for how long, approximately, have they done that? Would you say as much as ten, twelve or fifteen years?

A. Yes, I was going to say at least ten years; probably ten or twelve years.

Q. As far back in your judgment as 1928?

A. I rather doubt whether it would go quite that far.

Q. And they also make the cap in your own factory?

[fol. 11689] A. Yes.

Q. You have a zinc mill, I believe?

A. That is right.

Q. And how long have you operated the zinc mill as a part of the factory?

A. That zinc mill was installed in about 1915 or '16.

Q. And it has been making your caps ever since?

A. Yes.

Mr. Middleton: That is all.

The Court: That will be all, Mr. Myers.

Thereupon, EDWIN E. MILNER, being recalled for further examination, testified further as follows:

Direct examination continued.

By Mr. McCallister:

Q. Mr. Milner, just before recess you and I were having a little trouble in understanding each other about the reconstructed Kirk machine. Now, I reword my question to ask you when, if you remember, the reconstructed Kirk feeder was a satisfactory commercial feeder capable of serving the large Ball and the small Ball machines?

A. It was in 1925.

Q. Now, in view of that, what did you contemplate at the factory in connection with this reconstructed Kirk feeder and the Ball machines?

A. We immediately placed orders in the shop for, as I recall, five more Ball machines and five more feeders to be put on No. 5 furnace.

[fol. 11690] Q. So that your former statement that you were continually seeking to improve the machine still stands, but at the same time you had satisfactory feeders at that time?

A. That is right.

Q. Now, what became of those orders to make five more reconstructed feeders? Were they ever filled in your shop?

A. No, they were not.

Q. Tell me why they were not, if you can?

A. Well, No. 5 furnace at that time was being operated in connection with three Owens machines, and No. 3 furnace was being operated with the large Ball machine and the remodeled Miller machine and two Jelly machines. During the latter part of 1925 I was told by Mr. Ball that we would probably have to quit using the Needle feeder because it infringed the Hartford feeder.

Q. Did he say it infringed Hartford feeder?

A. Well, we were afraid that it did. We had been led to believe that it infringed the Hartford needle feeder.

Q. And then what did you do, and what did he tell you he had done, if he told you anything?

Mr. Apsey: I object, Your Honor, to what he told him he had done.

The Court: Yes, I think that is objectionable, as to what he told him he had done.

Q. Will you complete Mr. Ball's statement, then, what you were to do—what did he direct you to do in connection with this part of infringement?

A. We were directed to discontinue the use of the needle feeder, and in the meantime he had either purchased or [fol. 11691] made an effort to purchase the McCauley feeder, which at that time was in some state of development, and we were then ordered to take up the question of the use of the McCauley air feeder, which I believe was in 1928.

Q. You said in '25.

A. No, we used the needle feeder from 1925 up to 1928.

Q. Now, when you spoke of the purchase of the feeder, you mean the purchase of McCauley patents, did you not?

A. That is true.

Q. I show you two patents, one of which is numbered 1,281,083, and the other of which is numbered 1,322,318, and ask you if you know whether or not those are the patents referred to?

A. I can't tell by looking at that; I can examine that. The patent No. 1,322,318 was the one that we were going to use in place for other improvements to our feeder. This later patent, I think was a further change in the McCauley feeder that we never used. It was purchased, but not used.

Mr. McCallister: I am going to ask then that the first patent be marked as an exhibit.

The Court: That will be B-6081.

Mr. McCallister: And I offer it.

Mr. Middleton: What number is that?

Mr. McCallister: That is 1,322,318—is that right?

The Witness: That is right.

Mr. Apsey: It is still offered only for state of mind, Mr. McCallister, I assume?

Mr. McCallister: Beg pardon?

Mr. Apsey: Still offered as going to the state of mind?

[fol. 11692] Mr. McCallister: That is all.

Mr. Apsey: No objection.

The Court: It will be admitted.

[fol. 11693] Mr. Apsey: What is the date of that patent?

Mr. McCallister: November 18, 1919, on an application filed April 3, 1917. The exhibit offered is merely a certified copy of the patent, and I now offer it.

The Court: Admitted.

Q. Well, now, for the purpose of brevity I am going to merely ask you if you did produce an air feeder following the general outlines of this McCauley patent?

A. Yes, we did.

Q. Now, there were differences, were there, between what is disclosed in this McCauley patent and the feeder that you actually produced?

A. We started to try to follow the McCauley design but we met with very little success, and we improved on his pump arrangement and eventually succeeded in producing an air feeder that was fairly satisfactory.

Q. And again, for the purpose of brevity, what in your opinion was the difference in the structural features of the feeder that overcame the trouble you had with the so-called pump arrangement?

A. Well, the McCauley type of pump was an air-driven device in which one cylinder which was air-driven caused pulsations to occur in another cylinder, two pistons, and

piston heads, attached to one rod. We found that we were unable to control the weight of the gobs produced by that feeder, and we built two or three different styles of pump before we finally hit upon the idea of using a common supply of vacuum and air, admitted to the tube through suitable [fol. 11694] timing valve operated from cams on a Miller timer.

Q. In other words, your application of a special timer to that McCauley feeder converted your efforts into success, is that right?

A. That is true.

Q. Now, will you briefly tell us the difference between an air feeder and a plunger feeder,—and in doing so you might make a comparison between the needle feeder that you had employed and the so-called air feeder that you have just testified to as being built in 1928 or '29?

A. Of course, the needle feeder consists of a reciprocating needle which usually entered the orifice in the bottom of the feeder, and in the case of the air feeder we used a hollow clay tube, as we called it,—or bell, air bell,—and alternating charges of pressure and vacuum are applied to the top of the tube. When that tube is immersed a sufficient depth in the glass, it causes the glass to extrude under the pressure impulse and withdraws it through the orifice under the vacuum phase. In other words, it produces very much the same type of extrusion through the orifice as does the needle feeder, performs almost the same function, in a different manner.

Q. Of course this McCauley feeder was provided with a shear?

A. Oh, yes.

Q. Where was the shear located?

A. Directly under the orifice.

Q. Just as in the other feeder?

A. Just as in the other feeder.

[fol. 11695] Q. Now, will you tell me the function of this timing device that you spoke of; what was it for?

A. Well, the timing device served the purpose of having the pressure impulses occur at the right time, the vacuum impulses occur at the right time in relation to the pressure impulses, to the action of closing the shear and also tripping the machine. In other words, the timing device is such a device as to time the relation of all the various

functions of the feeder and the machine, in relation to each other.

Q. Could the various timing relations be varied by a manipulation of the timing device?

A. Yes, they could.

Q. Could they be varied during the operation of the feeder?

A. Yes.

Q. State your opinion as to the desirability of adjusting the timing device during the operation of the feeder, for the purpose of varying the timing relation of the operations of the air bell and the shear.

A. Well, in timing a machine, a feeder, if you can time it while it is in operation, you have visual means of observing the changes which you make in the timing arrangement. In other words, if you advance—we will say—the pressure valve ahead, you get your pressure impulse early; if you retard it, you get it later; and by observation you can see what effect the change which you make has on the gather or the gob, and get an idea of which way your are going,—whether increasing weight or decreasing weight, or [fol. 11696] whatever other effect you have on the gob shape. And I don't know how you could do that unless you did it in operation.

Q. Well, has the Ball Brothers ever operated the so-called McCauley feeder?—I will stop right there and ask you if that so-called McCauley feeder has a name at the Ball Brothers' plant, and if so, what it is.

A. Ball feeder.

Q. Are those Ball feeders in operation today?

A. We call them the HB-33, the ones that are in operation today.

Q. You are implying a change over the first Ball feeders?

A. Yes, that is a change that took place in 1933.

Q. Well, before we go to that I want to ask you if you have ever operated the Ball feeders without making the adjustment of the timer during operation?

A. Yes, we did.

Q. Will you tell me why you did that?

A. Sometime during the period of 1926 and '29 Mr. Ball informed me that there were some further patents that had been issued to Hartford, or decisions had been made on existing Hartford patents, that would prohibit us from changing the shape of the gob or the relation of the ma-

chine and shears and feeder while the machine was in operation.

Q. If I refresh your recollection it was in 1932 instead of '28 or '29, would that be correct?

Mr. Apsey: I would like to move that with regard to the last sentence, unless the answer is limited to showing the information received by this defendant, it be stricken, as hearsay.

[fol. 11697] The Court: The motion will be sustained.

Mr. McCallister: May I have the answer read?

(Answer read.)

Mr. McCallister: May I get this again? I probably am quite stupid about it.

Mr. Apsey: I simply object to this witness testifying to what Mr. Ball thought or what facts he said.

Mr. McCallister: I am sorry I was stupid; I didn't catch that.

Q. We don't want you to tell us what Mr. Ball thought, but you can tell us what Mr. Ball said or what directions he gave you. I have tried to refresh your recollection by asking you whether or not it was in 1932 as distinguished from an earlier date that the conversation took place between you and Mr. Ball about this matter of adjustment. Does that help you in fixing the date?

A. Yes, it does.

Q. It might have been in '32, is that right?

A. The Ball-McCauley feeders were installed on No. 5 furnace in 1930. They were built in '29 and put in operation in 1930. So that it must have been after 1930—I wouldn't say that it was '32—it might have been '31; but I do know it was after '30, now that you mention it.

Q. Now, will you tell us what was said by Mr. Ball and what instructions he gave you in connection with those feeders that were in use in, we will say, after 1930?

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[fol. 11698] A. Well, the timing that we were using at that time was one of our own design which was copied from the Miller, the William Miller timer. That was made in such a way that a series of valves could be rotated around a moving drum and——

Q. For what purpose?

A. For the purpose of changing the relation between the various operations. At this time that I mentioned, in 1930, '31 or '32, we were instructed to lock those valves in such a position so that they could not be adjusted while the machine was in operation.

Q. Did you do so?

A. And we did that.

Q. On all feeders?

A. On all feeders.

Q. Now, tell me what kind of operation you got with those feeders, with the timers locked so that adjustments could not be made during operation.

A. Well, we got operation, but every time we wanted to change the weight, if we found that the gob was too large [fol. 11699] to fit in the blank mold, it meant we had to stop and change a cam and move it around on the drum to get a less bulging drop. We frequently had to stop to change the relation of the shearing mechanism in order to produce the drop. It was very difficult to set up a machine with the valves locked around the drum and fix the cams in relation to them purely by guesswork, and that is what we had to do. Frequently we set the cams to what we judged would be the correct position and started the feeder, operated it a few minutes and found it wasn't producing the shape of gob we would want. Consequently we would have to stop it and take the cams off, move them around, put them back on and start it again. During that period, of course, the glass continued to flow in a stream.

Q. Out of the furnace?

A. Out of the feeder.

Q. Where did that glass go?

A. It went to the basement.

Q. How long would it ordinarily take to start up a cold feeder, where you were making timer adjustments during the operation of the feeder?

A. Oh, a matter of an hour or two hours.

Q. For making it while you were starting up, making adjustments?

A. Well, you said a cold feeder. It takes approximately an hour or hour and a half to heat a feeder, and after you have the glass in condition to make ware or approximately [fol. 11700] the temperature, then it is a matter of adjusting

your valves and your timer to get the shape of gob you want.

Q. How long would that take?

A. Beginning with the time of the heating-up period, possibly an hour and a half to heat up, and an hour to change the valve.

Q. Would you make a comparison of what you actually experienced while you were using the feeders with the timers locked so you couldn't make the adjustments during the operation of the feeder?

A. Oh, I should say three or four times the time would be required, five or six hours, sometimes a half a day to get a gob lined up that we had never made before, or one in which we had no record of the cam locations; that was a very difficult procedure.

Q. Now, you have spoken about a feeder which I think you called the HB-33, is that right?

A. That is right.

Q. And that was a reconstruction of this 1932 feeder?

A. That is right.

Q. Tell me about that, why did you reconstruct it to the HB-33 feeder?

A. Well, in 1933, in July, we installed one Hartford MU feeder on No. 5 furnace to be used in connection with a Lynch machine for making fruit jars and beer bottles. We found we didn't have much luck making wide mouth ware on a Lynch machine; we hadn't been able to make a good wide mouth container on our own feeder, with the Lynch [fol. 11701] machine, so that we did install one feeder.

Q. One Hartford-Empire——

A. Hartford feeder, an MU, and operated it from July—latter part of July—until the latter part of September. The production results on that feeder were not any better than they were on our own feeder, but the Hartford feeder had some advantages in the construction of it that appealed to us—bushing holders, shears, and the method of cooling the glass—which we were troubled with at the time. So before that feeder was taken out we made sketches of the parts that we were interested in which could be applied to our feeder, to the air feeder. Sometime during that period I was told by Mr. Ball that we were now licensed by Hartford and consequently we could use any of the designs of the Hartford MU feeder without any danger of infringing the Hartford patents.

Q. And what did you do in view of that?

A. Consquently we built what we termed the Model HB-33 feeder.

Q. Embodying——

A. Which is almost an exact duplicate of the MU, the Hartford MU feeder.

Q. From what standpoint?

A. From the standpoint of the heating chamber, cooling chamber, conditioning chamber, up to the bowl, in which we have our air valve. Hartford uses a needle and we use a valve. Substantially that is the only difference.

[fol. 11702] Q. In other words, the HB-33 retained the air bell and the pressure puffs and the vacuum pulls of the preceding feeder but in other respects it was a copy of the Hartford-Empire feeder?

A. That is true.

Q. Except as to operating parts for the needle?

A. Yes. I am speaking of the heating element, the heating and cooling section, the conditioning section, insulation, damper, stack, burners, burner tips, and things of that kind. Those are almost identical with the MU feeder.

Q. How about shears?

A. We adapted the Hartford shear blades. We continued using our own air-driven shears.

Q. Was Hartford informed of the changes you made in your feeders at that time?

A. Yes, they were.

Q. I believe you stated there are some of the HB-33's of the feeders now in use in the Ball Brothers plant?

A. That is right.

Q. Are there any Hartford feeders now in use at the Ball Brothers plant?

A. Two.

Q. What forming machines are they serving?

A. I.S. four-section.

Q. The I.S. are machines built by Hartford-Empire Company?

A. Yes.

Q. Forming machines built for Hartford-Empire Company?

A. That is true.

Q. Now can you tell me more or less generally, then, [fol. 11703] what kinds of feeders and what kinds of form-

ing machines Ball Brothers is using today in the Muncie plant, or any other plant?

A. We have the Hartford Type "K" feeder connected with the Hartford machines, that is one type. We have the HB-33 feeder that we use for narrow-neck ware on Lynch machines and also wide mouth on Miller press and blow. We use a flow feeder for manufacturing white liners and lids, and we also use a flow feeder for manufacturing tumblers. That is a rather, you might say, an HB feeder without a tube in it. The glass runs by gravity and is cut off and makes a rather stubby gob, drops in the mold, and produces jelly glasses. That is neither a needle feeder nor an air feeder.

Q. Then this feeder you speak of for making liners is neither a needle feeder nor an air feeder?

A. No. That is a flowing stream.

Q. How long has that feeder been there to your own knowledge, the flowing stream feeder that you have just spoken of?

A. It was there when I got there in '22. I don't know how much longer than that.

Q. And it is still there?

A. Yes.

Q. Do you know anything about the removal of the Owens suction machine from, I believe it was, furnace No. 3?

A. Yes.

Q. You know about it?

A. Yes.

Q. What do you know about it?

[fol. 11704] A. They were removed in 1940.

Q. What did you have to do with it?

A. Well, I superintended the work of removal.

Q. There was testimony as to your substitution of other machines. Did you hear that?

A. Yes.

Q. Tell us about it in your own way, if you will.

A. Well, after the machines were removed we rebuilt the refining end of the furnace, connected it up with those HB-33 feeders and installed Lynch machines.

Q. Now, give your opinion as to the reason for making the substitution from Owens suction machines to feeder-fed machines.

A. For more flexibility, higher production and better quality ware.

Q. And from the standpoint of better quality of ware, what do you mean; you mean appearance, or in actual quality?

A. I mean actual quality.

Q. Explain that, will you?

A. Well, as I say, that furnace was originally equipped with six Lynch machines that were primarily put on there to make bottles and packers ware. Since that time those machines have been removed and press and blow machines have been put on there to make fruit jars, which demonstrates you change the flexibility of the ware to be made. As to the quality, I believe it can be truthfully said that a press and blow machine will produce wide mouth ware of better quality than the Owens suction machine.

Q. Now, you referred to the press and blow as producing [fol. 11705] particular ware of better quality. Would you say each forming machine has its characteristic ware that it produces best?

A. Oh, absolutely.

Q. Tell me a little more about that, if you will.

A. Well, a press and blow machine, I believe, is recognized throughout the trade as the best wide mouth machine, because it forms a smooth finish. It gives you distribution of the ware——

Q. Of the glass your mean?

A. Of the glass. You are able to put the glass in the shoulder or the heel or in the bottom, wherever you choose to put it, without much difficulty. The Owens suction machine makes a good wide mouth container, but they are bothered with rough-cut, cold stubs and blisters, etc. So in the case of full wide mouth—what we call a wide mouth, of 2⅝ diameter—the press and blow machine makes a better container than the Owens. Likewise I would say the Mooreshead machine makes a better press and blow article than the JPM or the press and blow Miller machine, but only in smaller size. In other words, it will only go from a quart down to 2 or 3 ounces. So all of these machines have their certain limitations. The I. S. machine is limited to a greater or lesser degree as to the quality of ware and the design of the equipment, molds, plungers and other operations. There is no one universal machine that will make all kinds of ware good. If there was I think we would all have them.

[fol. 11706] Q. Does that have anything to do with your opinion that the substitution of feeder fed machines for Owens suction machines produced what was a good substitution?

A. Certainly it was a good substitution.

Q. And for the reasons you have stated?

A. For the reasons I have stated,—flexibility, quality and increased production. We could only get three Owens machines on a furnace. We can put as high as eight feeder machines on a furnace, or more if you are called upon to do it. We are limited, of course, by the size of the furnace, but six, seven or eight-flow machines on a furnace makes a very nicely-balanced unit. Three Owens machines on a furnace makes a nicely-balanced unit. Of course, you can put less on, but it is difficult to put more on. So the matter of flexibility is, of course, the big item. In addition to the machines themselves, an Owens machine is probably, as you know, supported on a rather heavy sub-structure, and they are not readily moved. But the feeder type furnace such as we have——

Q. For the feeder type machine?

A. The feeder such as we have, we can shift from a press and blow machine to a blow and blow machine in a matter of two or three hours. That is not true with the Hartford I. S. The Hartford I. S. is pretty securely anchored to the floor.

Q. It is not true with the Owens suction, either?

A. It isn't true with the Owens suction. But with the Lynch machine, the JPM machine, the large Miller, and all of those smaller machines as we know, they can readily be [fol. 11707] shifted from one furnace to another to accommodate production.

Q. Would you class the Mooreshead machine which you have just spoken of as one of the smaller machines which can be readily shifted?

A. Yes. We can replace it with a Lynch in a matter of a day.

Q. How many Mooreshead machines does Ball Brothers Company have in its plant today?

A. Six.

Q. Do you recall where Ball Brothers got those Mooreshead machines?

A. They received one from the United Glass Bottle Company of England, and built five in their own shop.

Q. How are the Mooreshead machines fed with glass?

A. With feeder.

Q. What was the original contemplation as to that, if you know?

A. I believe at the time they acquired the rights to use that machine we were also to be given rights to a feeder which UGB was then experimenting with.

Q. Which is "UGB"?

A. United Glass Bottle of London, England.

Q. Did you ever get such a feeder?

A. No.

Q. What did you do in connection with a feeder for the Owens machine in connection with the Mooreshead machine I mean?

A. The first Mooreshead we received we put it under the [fol. 11708] glass with an HB 33 feeder but we received some information, blueprints, photographs, of a suction gather device that UGB would release to us when, as and if proved successful. During this period a man named Wadsworth was also working on such device and Mr. Ball secured his services to outline to me a suction gathering device for feeding the forming machine, similar, or at least along the lines that UGB was working on. We built such a unit and experimented with it for a matter of about three months. I gave it up as a bad job. We could not make it work.

Q. Just for the purpose of reference, what did you call this Wadsworth design that you worked with?

A. Mr. Wadsworth called it a "geyser" feeder, the geyser type forehearth with a vacuum measuring cup. I don't remember now, but we gave it a model number. We gave all of our equipment a model number and date, which identifies it from one or the other.

Q. What was the fundamental feature about this geyser feeder that caused you to work with it and try to develop a suction cup for operation with it?

A. In most suction machines, unless you had a revolving pot, you were always faced with difficulty trying to gather glass from the forebay or forehearth attached to the firing end of the furnace, due to the inability to get away from the cold cut-off. Wadsworth had an idea of creating some type of a geyser — which the glass would flow up through an orifice instead of down through an orifice such as a drop feeder.

[fol. 11709] Q. Kind of bubble up?

A. Yes, bubble up—a geyser. It was a very good idea as far as the geyser part of it was concerned. We made that work very nice. We were able to cause the glass to flow through the orifice and overflow into another channel. That glass flowed back towards the furnace and by means of a refractory pump in a well, we were able to pump it back into a higher level. So far as the geyser feeder was concerned it worked nicely, but our difficulty was in gathering a piece of glass to a unit that wasn't part of the machine and depositing in a machine and getting cold cut, often cold mold marks. The molds had to be water-cooled. When we got the molds hot enough to operate we could not get gathers. When it got cold enough to form a gob, they got cold marks and blanks.

Q. Did you arrive at any definite conclusion from your experimental work with this geyser feeder? If so, what?

A. I arrived at the definite conclusion that a gathering device that was not a part of a forming machine could not be depended upon, as such a device having one or two gathering cups for the glass would be absolutely impractical. I believe we exhausted all possibilities of that type of unit.

Q. When you speak of "that type of a unit" you are really making a distinction between the suction gathering operations of the Owens suction machine, are you not?

A. Yes.

[fol. 11710] Q. There the suction gather is a part of the machine itself?

A. That is true.

Q. From your own knowledge—that is to say from information you derived from your work as plant engineer—how many types of machines were available to Ball Brothers we will say from April, 1922, until today, for the making of fruit jars?

A. Well, there is a blow and blow——

Q. I mean general types?

A. Press and blow machine, blow and blow machine, and the suction machine.

Q. I would like to have you make the classification as between feeder-fed machines and Owens suction machines. During your stay at the Ball Brothers plant how many types of machines of that type have been available for

the making of fruit jars; not how many, but how many types of machines?

A. Oh, I don't know. There is a whole raft. There is the Miller——

Q. No, you misunderstand my question, and it is because I am awkward in stating it. What I am trying to do is to get you to class forming machines into two types, one a suction, such as the Owens suction, and the other type, the feeder-fed machine. Then I am asking you with that classification as to types, how many types of machines did Ball Brothers have available to it from 1922 on, for the purpose of making fruit jars?

[fol. 11711] A. We had three types, if you are referring to—maybe I still don't understand your question. We had the suction machine, the Owens machine, and the feeder machine.

Q. Yes.

A. Those are the only two types that we had used consistently for making fruit jars.

Q. That is what I was trying to get at. Then it is not three types?

A. No.

Q. How many such types does Ball Brothers have today for the purpose of making fruit jars?

A. We have the two.

Q. Two?

A. Not today. We have one. Now all we have left is the feeder-fed machine. The suction machines were taken out in '40.

Q. Now you have commented upon,—you have stated your opinions pretty definitely to the effect that the press and blow machine is the highly desirable machine for making wide mouth ware. Would you say wide mouth ware such as fruit jars?

A. I would say wide mouth such as fruit jars or wide mouth ware such as packers' ware, pickle jars, mayonnaise.

Q. But you include fruit jars?

A. Oh absolutely.

Q. Now I want you to stress again the characteristic of the press and blow machine which in your opinion makes it the desirable machine for making wide mouth ware.

[fol. 11712] A. In a press and blow machine, Mr. McCallister, the parison is definitely formed into a pre-formed

shape and it is pressed into that shape by means of considerable air pressure. Consequently all of the sealing shoulders are filled up. The rings are filled up. The threads are filled up, and the jars are filled up. You either have a full parison or you did not put enough glass into the mold to make it. Consequently you have dropped shoulders or unsealed tops, but normally the press and blow machines definitely form a parison of the exact dimensions with inside and outside, the inside formed by the blower so that the parison can then be blown into a blown article of almost any shape.

Q. Would I be making a proper statement by saying that in pressing this parison you have almost unlimited force to apply through the pressure plunger onto the glass in the parison mold?

A. That is true within the limits of the air cylinder of the size you can get on the machine, using air pressure up to, of course, any pressure you might want to use.

Q. By comparison, for example, with the blow and blow, what would you say as to the force involved in the making of the parison?

A. Well, on the blow and blow machine you can only form the outside of the parison, because you merely blow a bubble up on the inside and that bubble is liable to go anyplace.

Q. How about the Owens suction machine? Make a comparison there between the press and blow and the Owens suction.

[fol. 11713] A. Well, in case of the Owens suction machine, of course we apply a vacuum to the top of the suction mold and in dipping the blank mold into the revolving pot the atmospheric pressure on the surface of the pot forces the glass into the blank up around the plunger and into the finish. There, of course, we are limited. If we could get a perfect vacuum we could get a pressure of 14 pounds per square inch. That is as far as we can go. There is no more. On the press and blow machine we can get pressure up to three or four hundred pounds to the square inch if we want to do it.

Q. Do you know anything about the Alexander H. Kerr & Company?

A. I know about the Kerr Glass Company. I don't know

as it is called the Alexander H. Kerr Company. I have always called it the Kerr Glass Company.

Q. All right. Where is it located? What do you know about it? I will put it that way.

A. I know they have a plant at Sand Springs, Oklahoma, and one at Huntington, W. Va.

Q. Have you ever been at their plant?

A. I have been at the Huntington plant.

Q. More than once?

A. Two or thee times.

Q. When you were in that plant was it operating?

A. Yes.

Q. What was it making?

A. Fruit jars.

[fol. 11714] Q. Did you examine the ware being made?

A. I did.

Q. Did you observe the type of machinery that was being used in the manufacture of those fruit jars?

A. Yes.

Q. Will you tell what it was?

A. The press and blow machine of the Miller type.

Q. How were they fed?

A. Fed by Ed Miller—fed by a stream feeder that I would call an interrupted stream feeder, in which the gather is accumulated in a gob and deposited in the mold.

[fol. 11715] Q. And had you ever seen such a feeder before you saw it there in the Kerr Glass Company plant—is that what you call it?

A. Yes.

Q. Had you seen such a feeder before?

A. Yes.

Q. Where?

A. At Schram Glass plant, in Sapulpa, Oklahoma.

Q. When?

A. Oh, I presume that was back in 1918, 1917, or '16, along in there; quite some time ago. I couldn't exactly say.

Q. But at any rate, the feeder that you saw at the Kerr plant was in general an old type of flow or interrupted flow feeder; is that right?

A. That is right.

Q. What kind of a gob or charge of glass was produced by this Kerr plant feeder when you saw it in operation?

A. Well, the Kerr device is a device that gathers a charge

in the cup from a constantly flowing stream through the orifice of the forehearth, and the cup has a gate on the bottom of it with the cutting charge, and the gate is withdrawn and the cup of glass flows out, with a pendant string; in other words, the glass continues to run through the cup and then it is cut off at the bottom by the gate—it is cut off at the bottom by the gate, the gate closes the cup to make another gather which cuts off the tail. I should say that the gather resembles rather a chunk of glass; it isn't in the form of a billet exactly, with considerable tail on it, two or three inches long.

Q. I have heard those gobs described as tad pole shape; is that right?

[fol. 11716] A. That would be a fairly good description.

Q. And the tail is above the large part of the tad pole; is that it?

A. That is true.

Q. Now, did the tail, so far as you know, during your observation, give any trouble there at the Kerr plant, and if not, why in your opinion didn't it?

A. Well, the Kerr feeder was also equipped with a tail guide, which consisted of a cylindrical device that closed up and guided the tail as the charge entered the mold of the machine to keep it from overlapping the side of the mold; that usually deposits that tail in the blank mold in a lapped condition, and the plunger descended into there, and of course forces the glass up into the neck ring. Now, the Kerr feeder, due to the fact that they operate rather hot glass, because it is in a flowing condition, it is pretty liquid, and in pressing the parison using a hot glass, they are able to force the glass up into the plunger and make a pretty decent finish, although in lots of ware that I have seen made on the Kerr feeders there is always a certain amount of laps and runs and blisters, due to the entrapped air of the tail flowing over on the preceding part of the charge. That is a very common defect with that type of feeder. We have built them in our own plant; we know how they work.

Q. But even so, Kerr is making, and what you saw made there was, good commercial ware; am I right?

A. Oh, yes. I think so. I don't think they make what you might term high production or high speeds, and I don't think they make as good a quality, but they make a good salable fruit jar.

Q. And they sell it, apparently?
[fol. 11717] A. And they sell a lot of it.

Mr. McCallister: That is all, Your Honor.
The Court: Any questions by any of the other defendants? You may proceed to cross examine.

Cross examination.

By Mr. Apsey:

Q. Mr. Milner, when did you observe the Ed Miller forming machines operating at Kerr?
A. Well, let's see if I can remember it. I visited that plant the first time, I believe in '36, if I remember correctly.
Q. And at that time were they old machines, old forms of Ed Miller machines?
A. No, I believe the machine they had there was a JP Machine, I couldn't be positive about that.
Q. Do you know how long since 1936 the Ed Miller machines have been operated at Kerr?
A. No, I don't.
Q. Did you ever observe them yourself at any subsequent time?
A. Well, I was back there in '37 again, and I believe that they were still operating them then, to my best knowledge.
Q. Now, I believe you testified that there are some Hartford feeders now operated at Ball Brothers' plant; is that right?
A. There are two installed and one in operation; the other one is down.
Q. The one which you testified operated for a short time in 1935, is that the one—has that one been operated since?
A. That was in '33.
Q. That was in 1933?
A. That is right.
[fol. 11718] Q. Has that Hartford feeder been operated since?
A. No.

Mr. McAllister: It was taken out, I think he testified.
The Witness: It was taken out and sold.

Q. That is not one of the two feeders now, then?
A. No.

Q. Now, you have a certain number of HB-33 feeders?

A. That is true.

Q. How many of them do you have at present?

A. Well, there are six, ten, sixteen, twenty-one, twenty-seven, thirty-four, forty-two, forty-two and six is fifty—I can't—between forty and fifty. I can tell you exactly if you want to know.

Q. Well, we would like to have you get that for us.

A. Alright. On our No. 1 furnace there is—originally there was six on there.

Mr. Apsey: If counsel wants to stipulate the number——

Mr. McCallister: Well, maybe we do know—do you know how many?

The Witness: There as five on No. 1, there are three on No. 2, there are six on No. 3, there are five on No. 4, seven on No. 6——

Mr. Schaeffer: What about No. 6?

The Witness: Seven on No. 5; eight on No. 6; there are six at Wichita Falls, and five at Okmulgee.

Mr. Apsey: I make that 45.

Mr. McCallister: I think that's about right.

[fol. 11719] The Witness: Oh, I forgot No. 9. There are six on No. 9.

Mr. Apsey: That would make it 51.

The Witness: That is about right.

Mr. Apsey: While they are adding that up, I will ask you another question.

Mr. Schaeffer: 51.

Q. Now, do you have any other types of feeders besides the two Hartford feeders and the 51 HB-33 feeder?

A. Yes, we have nine flow feeders connected to dual molds for producing white liners; that is a liner that goes on the inside of the Mason zinc cap. We have one machine on lids which is operated from the same type of feeder, although—we have got a little bit of confusion there. Up until last November all of our liners and lids were made on what we call our lid pot. That is the feeder in which the stream flows continuously, and is diverted from one side to the other by means of the cup with a shear on it, so that it feeds the molds of one chain and then reverts over to the other chain. Those feeders are a matter of—oh, three feet long—extended from the furnace a matter of three feet.

Q. I don't think I care so much about the detail of the machine, but I am just trying to find out how many feeders of other types than the Hartford two there are in all?

A. The Hartford, nine of the flow feeders on white liners and one on lids, and let it go at that.

Q. And is that all the feeders now in addition to the HB-33 feeder that you have, outside of the two Hartford feeders?

[fol. 11720] A. At the Muncie plant?

Q. At all the Ball Brothers' plants?

A. We have some machines at—some equipment at Three Rivers, but I couldn't tell you what is there. There are portions of a feeder, and maybe portions of a machine—I don't know. That is one plant I cannot give you very much information on.

Q. Well, with that exception, then, is it correct to say that there are 61 feeders other than the two Hartford feeders in the Ball Brothers plant?

A. That is right.

Q. And when were those two Hartford feeders acquired?

A. They were put in in 1941; some time last summer.

Q. Now, I think you also testified that you had two I. S. machines; is that right?

A. That is right.

Q. Hartford machines?

A. That is right.

Q. When were they acquired?

A. Same time we acquired the feeders.

Q. And with the exception of the one feeder in '33, that was the first time that you acquired any Hartford equipment?

A. That is true.

Q. Now, can you tell me how many forming machines of different types, without going into the difference between the types—I am not concerned about that—but how many forming machines do you have at Ball Brothers besides the two I. S. Hartford Machines?

A. We have press and blow machine, and blow and blow machine.

Q. Can you give me the number of machines other than [fol. 11721] the two I. S. Machines?

A. Well, we have the Lynch 10; we have Lynch F, and we have got the——

Q. I don't mean the different types; I mean the number of machines?

A. Oh, the total quantity?

Q. How many machines, the quantity?

A. Other than this I. S. Machine?

Q. That is right. How many forming machines other than the I. S. That is what I want to know?

A. Well, we have switched those around so much, I don't think I can tell you exactly, but I could make a fairly good guess at it.

Mr. Apsey: Well, can we get the figures from counsel?

Mr. McCallister: Oh, he will make a guess; suppose he misses one or two—you don't care.

Mr. Apsey: Well, if it isn't more than one or two we don't.

The Witness: Oh, by the way—I didn't mention the Mooreshead machine. That is a press and blow machine, but it is different from I. S. or Lynch.

Q. Well, I think you said you had six of those?

A. Yes.

Q. Now, I assume you will include those in your calculation of your total number of forming machines other than Hartford machines?

A. That is right.

Mr. McCallister: Could I help? I don't know whether this would help, but you have estimated that you have 51 [fol. 11722] feeders of the Ball type. Would it help any to suggest that there has to be a forming machine for each such feeder, a forming machine of some type for each such feeder?

The Witness: Yes, that is true.

Mr. McCallister: So in round numbers you have around 51 forming machines?

The Witness: We have that many forming machines.

Mr. McCallister: Excluding the small presses for the lid and liner machines.

The Witness: That is true.

Mr. McCallister: Is that accurate enough for you?

Mr. Apsey:

Q. Well, you have approximately one former for every feeder?

A. We have a few spares.
Q. You have a few extras?

Mr. Apsey: I guess that is alright.
Mr. McCallister: I don't want to be burdended with having to come back here with some information, if we can avoid it.
The Court: Don't come back here after Friday.

Q. Now, the Owens feeders which you have testified about, were changed considerably during your employment at Ball Brother-, weren't they, during the course of that time?

Mr. McCallister: I object to the question; there has been no reference to Owens feeders.

Q. I beg your pardon—the Owens machine, suction machine?
A. Yes.
Q. The Owens suction machines have been improved and changed from time to time during the period that you have been employed by Ball Brothers?
[fol. 11723] A. Somewhat, yes.
Q. And what you have said concerning the reasons why it was uneconomical to operate the Owens suction machines in 1940, would be even more true of the Owens machine as it existed, in the form it existed when you first came to Ball Brothers in 1922?
A. Well, I would qualify that statement by this: that when I came to Ball Brothers in '22, we didn't have feeder-fed machines such as we have today, but at that time I would say that the Owens machine was the best wide-mouth machine in existence.
Q. No, but my question is directed to operation today; if you had to operate today with the Owens machine as it was in '22, it would be even less economical compared to feeders than it would be to try to operate with the Owens machine having the improvements that it has today?
A. Oh, most of the improvements that were made were such as counterweights on the dip heads, and knockouts, and things of that kind, and more directed towards improved quality, of course, which would mean the improved machine efficiency. However, I would say that the improvement of furnaces, revolving tops, carrying in devices or conveyors

to get the jars into the lehr, with little or no loss, did raise the production of fruit jars considerably between 1922 and 1940.

Q. Well, the Owens machine that you discontinued the use of in 1940, was that a machine which you had had in operation since you first came with the plant in 1922?

A. Yes, they were there.

Q. The same machine?

A. The same machine.

(15 Minutes recess.)

[fol. 11724] Q. Mr. Milner, just before the recess you were testifying with respect to the Owens suction machine, the use of which was discontinued in 1940, and I believe you told us that same machine had been at the plant all the time during your employment there from 1922 on?

A. That is right.

Mr. McCallister: There were three of them,—may I make the suggestion?

Q. There were three of those machines?

A. Three of those machines on that particular furnace.

Q. And all three of those machines were there during all that time?

A. Yes, sir.

Q. Were those the old type of Owens machine that was constructed under the LaFrance dip head patent?

A. No, those machines were the Owens AR machines, in which only the head dipped in the glass.

Q. I see. Did you ever make fruit jars with presses?

A. With presses?

Q. With press machines alone, just the press process?

A. No, not to my knowledge.

Q. Is it commercially feasible to make them in that way, do you know?

A. I don't think so.

Q. Mr. Kirk, who invented the Kirk feeder, was he an employee of the Ball Brothers Company?

A. Yes.

Mr. McCallister: May I object to the question? There has been no reference to an invention in connection with the [fol. 11725] Kirk feeder. It was merely designated as the Kirk feeder.

Mr. Apsey: Well, this Mr. Kirk, I take it, was the person who built the Kirk feeder; is that right.

Mr. McCallister: That is right.

The Witness: That is true.

Q. And he was an employee of Ball Brothers Company?
A. Correct.

Mr. Apsey: No further questions.

* * * * * * *

Mr. Luther Day: We have one witness with some charts, Your Honor.

The Court: Proceed.

Mr. Day: If the Court please, — ness will testify on behalf of the Glass Container Association, the defendant Stevenson, and the defendant Ackerman, on whose ———

As Your Honor knows, we have filed motions in behalf [fol. 11726] of each and all of those defendants for dismissal of the case, at the end of the plaintiff's evidence, and I take it the offering of this witness will not be in prejudice to our rights to reply upon those motions?

The Court: That is correct. It is my intention to return to those motions just as soon as the taking of testimony has been concluded.

Mr. Day: And they will be considered upon the testimony as it stood at the end of the government's case?

The Court: That is right.

Mr. Day: Thank you, sir.

Thereupon the defendants, Glass Container Association, Stevenson, and Ackerman, called as a witness,

Victor L. Hall, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Luther Day:

Q. Will you state your name, please?
A. Victor L. Hall.
Q. How old are you?
A. Forty-three.
Q. Where do you live?
A. 62 Ridgewood Drive, Rye, New York.

Q. What is your business?
A. I am assistant business manager of the Glass Container Association.
Q. How long have you held that position?
A. That position just since January 1st of this year.

[fol. 11727] The Court: You say you are assistant manager?
The Witness: Assistant business manager.

Q. You succeeded to that position when Mr. Ackerman, a defendant in this case, became connected with Thatcher?
A. That is correct.
Q. Prior to that time what was your connection with the Glass Container Association?
A. I held the position of secretary and treasurer prior to that time.
Q. For how many years?
A. Starting with the spring of 1930.
Q. And while you held that position, did you have charge of the collection of data and statistics and matters of that kind, for the Association?
A. I did, sir.
Q. During all of that period of time?
A. That is correct.
Q. And have you, at our request, prepared certain charts or had them prepared under your supervision, and have you also prepared for us certain figures and tables of figures?
A. That is correct.

Mr. Day: I would like to mark these exhibits our next exhibits.

(Exhibits marked GCA-6082 and GCA-6083.)

Mr. Day: Now, I have here an exhibit marked GCA-6082, which shows total shipments compared with capacity, 1928 to 1939, and I also have, Mr. Apsey, the figures that correspond with that chart so you may have them before [fol. 11728] you.
Mr. Apsey: Yes, we have them.

Q. Mr. Hall, do you have the chart before you?
A. I do, sir.
Q. I will ask you whether or not that chart was prepared from figures and statistics under your supervision?

A. It was.

Q. And those figures and statistics consist of what?

A. They consisted of reports that we obtained from the member Glass Container Companies. That was true of the shipments, it was also true of the data covering the capacity, both as to active and as to idle capacity.

Q. And the figures from 1928 to 1933, from where did they come?

A. The shipment figures for that period were obtained at the time of the Code Authority. At that time we made an exhaustive survey, going back to 1928 and covering the period from '28 to the first nine months of '33, inclusive. That survey covered production in gross and pounds, and shipments in gross, and we had some engineers on the job that, in most instances, anyway, actually visited the plants and checked the records in order to make sure we did have as nearly as possible the accurate figures.

Q. And from 1933 to 1939 where did the figures come from?

A. They came from reports that the members returned to us each month, showing the same information as to production, shipments, and also stocks on hand.

Q. And this compilation is made from those figures that were thus received, is that right?

[fol. 11729] A. That is correct.

Q. Under your supervision?

A. That is right.

Q. And so far as you know, they are correct?

A. Yes, sir.

Q. What does this portray, this chart here that you have in your hand?

A. It shows several things: first, the solid line toward the bottom marked "Shipments" shows the trend of the total shipments for the industry from the period of 1928 through 1939.

Q. Is that the whole industry?

A. That is the whole industry. You will note that that started with just slightly less than 32,000,000 gross for the year 1928 and for 1939 was forty-nine million, three hundred and sixty-six odd thousand gross.

Q. Now, on that question of shipments, do the figures shown here correspond also with your stipulated figures introduced in this case?

A. Yes, they do.

Q. All right. That is shown by GCA-5188, Mr. Apsey. Now, what is the next line, "Idle Capacity", what does that mean?

A. The next line, you will notice at the side——

Q. I am wrong—it is "Capacity of Active Furnaces". What does that mean?

A. That whole cross-hatched spacing there indicates the active capacity which was available in the glass container industry during that period. And when I say "Active [fol. 11730] Capacity" it doesn't mean, of course, that those furnaces were operating at all times or to full capacity, but they were built, equipped, and as we considered in the operating schedules, the comparison of the shipments curve with that curve marked "Capacity of Active Furnaces" shows the rate that the shipments compared to the total active capacity.

Q. And shows the extent to which the active capacity exceeded the shipments?

A. That is correct. On our table we show that in 1928 that rate of operation was 58.9% and that it went down as low as 47.8 in 1932, reached a high of 70.9% in 1937, and ended in '39 at 63.8%.

Q. Now, what is the top line?

A. The top line includes a certain number of idle furnaces, so-called "Idle Furnaces". The way we differentiate between active and idle was to consider whether or not they were fully equipped and could be put into operation, say, in not more than sixty days' time; and we have during all that period a certain number of furnaces which were not considered in the operating schedule. The tanks were there, the buildings were complete and everything, but in some cases it meant some new lehrs to be put in or at least repaired, that couldn't be done in, say, sixty days' time, and we still have a certain number of those furnaces which are not in our current statistics showing active capacity but are considered potential capacity.

Q. Then the top line across is "Total Potential Capacity," and does that include all of the capacity?

[fol. 11731] A. Yes, sir, that includes the active furnace capacity and the idle furnace capacity.

Q. As you just described it, is that right?

A. That is correct. And that shows that our total potential capacity as of 1939 is, roughly, 85,000,000 gross, and

against that for 1939 we shipped slightly less than 50,000,000 gross, or the rate of operation was 57.6%.

Q. Then you have a space in between the lines "Capacity of Active Furnaces" or active capacity, and "Potential Capacity", that you call "Idle Capacity". Now, what is that?

A. That just represents those furnaces which we considered not ready to operate immediately.

Q. But capable of operation?

A. That is correct.

Q. How did you figure out the capacity, briefly?

A. The capacity is figured from the total melting area of the furnaces. For each year we have computed the total square feet melting area, and then that was divided by a figure representing a number of square feet of melting area which would be required to produce one ton of packed glass. In 1928 that figure was 12 square feet to produce one ton of packed glass. That gives the number of tons per 24 hours. Then we multiplied that by the working days per year, which we considered to be 280 days. We arrived at that by deducting the Sundays and a certain number of holidays and 28 working days to make furnace repairs during the year, so that that gave us 280 days times the tons per day, which [fol. 11732] gives the tons and the pounds. And then to get the gross we divided the tonnage figure by the average weight bottle, and that average weight bottle varied from year to year depending on the mix of our production. So that that was the way we arrived at the total capacity and gross.

Q. You started out, you say, with 12 square feet as producing one ton of glass in 24 hours. Was that afterwards changed due to more efficient operation of furnaces?

A. That is correct. When the Code Authority study was made in 1933 we used the figure of 9 square feet, and then by 1938, through studies that were made, we determined that 8 was the proper figure; so that we are at this time, and have since 1938, been using 8 square feet.

Q. Now, what is this paper, GCA-6083?

A. That is the supporting data from which the various curves on the chart were made. First, we have the shipments which I have explained as having come from the various member companies through that period. The active capacity figure was calculated, first, by knowing the total

number of active furnaces in the industry, and the total square feet melting area of each. Also, in order to arrive at that figure, we had to have the average weight bottle for each company. The last column, "Total Potential Capacity" was arrived at in the same way and merely includes the idle furnaces not then in the active operating schedules.

[fol. 11733] Mr. Day: I want to offer GCA-6082 and 6083.

The Court: Without objection, they will be admitted.

Mr. Day: I want to turn, now, to what is styled "Progress of Companies Shipping Less Than 200,000 Gross in 1928". There is a chart and also some figures. Will you mark them as Exhibits, please?

(Marked as exhibits.)

Q. Mr. Hall, what is this chart that is marked GCA-6084?

A. Well, that is the method we have used in illustrating the progress of those companies in the industry which, back in 1928, shipped less than 200,000 gross for that particular year. In other words, we took the 200,000 gross as a means of segregating these companies from the rest of the industry.

[fol. 11734] Q. And the figures came from what?

A. The figures are part of the totals which we had on the previous chart. In other words, it was the total of the companies shown here plus all of the other companies that made up those totals of shipments and capacity.

Q. Looking now to the Chart 6084, each one of those lines has a number, is that right?

A. That is correct.

Q. And the number corresponds with the number given to a company on 6085, is that right?

A. That is right.

Q. As you follow the lines for any number, starting at 100 and beginning with 1928, you see a fluctuation in the course of production of that company from 1928 up through 1939, is that right?

A. Yes. That is correct, sir.

Q. And 6085 is the tabulation of figures upon which 6084 is based, is that right?

A. Yes, that is correct.

Q. And 6086 is the second page of 6085, is that right?

A. Yes, sir.

Mr. Day: I want to offer 6084, 5 and 6.

The Court: Without objection, they will be admitted.

Mr. Day: 6087 is the chart relating to companies shipping more than 200,000 and less than a million in 1928, and 6088 is a compilation of figures relating to the same matter.

Q. 6087, Mr. Hall, is similar, isn't it, to the previous [fol. 11735] exhibit chart except that it relates to companies shipping more than 200,000 and less than a million in 1928?

A. That is correct. In this tabulation we show 12, I think it is, additional companies.

Q. In what we might call the middle class?

A. That is right.

Q. Over 200,000 and less than a million?

A. That is correct, and these figures, of course, go to make up the totals shown on that first chart showing the total shipments.

Mr. Day: I want to offer those, if Your Honor please.

The Court: They may be admitted.

(Exhibits 6087 and 6088.)

Q. 6089 and 6090 relate to the progress of companies shipping more than a million gross in 1928, is that right, Mr. Hall?

A. That is correct, sir.

Q. And 6090 itself has Anchor, Armstrong, Ball, Hazel, Owens, Thatcher, and Olean. Those are the big companies, are they not?

A. That is correct. Those companies shipped more than a million gross during the year 1928.

Q. And the shipments for 1928 up to 1939 are shown on 6090?

A. That is correct.

Q. They correspond with the fluctuation line on 6089?

A. That is right, sir.

Q. Starting in 1928, what companies are included in the lines, for instance, for Owens, in the calculations?

[fol. 11736] A. That line for 1928, we have the Owens Bottle Company and the Illinois Glass Company and several others. For example, Berney Bond was a separate company at that time. The Atlantic Bottle Company was another. On the West Coast there were several companies that were included in this figure, the Illinois Pacific Coast and some others.

Q. That is, Owens in 1939 and now has been made up from various companies?

A. That is correct.

Q. And as I understand you, starting back in 1928 you have included within the Owens' figures and the Owens' fluctuating line all of the component companies even before the time they went into Owens, is that right?

A. Yes, that is right.

Q. Is that true also of other companies named on 6090 and having lines on 6089, which are composed of smaller component companies?

A. That is correct. In each case we included with the present company such as Anchor Hocking the component parts back to '28, even though they were not part of Anchor Hocking in some of those earlier years.

Q. Now, have you explained that to the Court? Is there anything you want to add, or have you explained that to the Court? I think Your Honor has the fact in relation to that?

The Court: I understand it.

Q. Are the figures in 6090 the same as contained in a stipulation heretofore introduced in evidence?

A. Yes. They are the same figures as were shown for [fol. 11737] those individual companies. I think in the case —in fact, I don't know whether we combined Thatcher and Olean in the stipulation, but we do combine them here.

Mr. Day: I want to offer 6089 and 6090.

The Court: Without objection, they may be admitted.

Q. 6091 is what, Mr. Hall, shows what?

A. That shows the progress of the companies grouped according to gross shipped since 1928. In other words, we have taken each of the three groups. First we have called the A group, which are those which have shipped under 200,000 gross in 1928. B, the intermediate companies between 200,000 gross and a million. C, those who shipped over a million in 1928.

Q. And put them all in one chart?

A. Yes, and shown in the graph on the line showing their progress over that period.

Q. Yes. 6092 has what figures on it?

A. That has the total figures for each group. In other words, the "A" group shows the total shipments for each of the years, and the percentage or index numbers, as we calculated them, and then at the bottom the total industry figure, including all three groups and the percentage figures for each of the years.

Q. And the million and over on these exhibits is figured the same way, that is by including from the beginning the companies that became associated into a single big company?

A. That is correct.

Mr. Day: I want to offer 6091 and 6092.

The Court: They may be admitted.

[fol. 11738] Q. Are the shipments for the large companies as shown on these exhibits the same as those shown in GCA-5188?

A. That is correct.

Q. Mr. Hall, I have here the Government's Exhibits 1390 to 1485, already introduced in evidence. Do you want to look at them, Mr. Apsey?

Mr. Apsey: Yes.

Q. That shows total shipments, 1928 to 1939, seven months in 1939, then the company actual shipments and then the company forecast, and the variation from forecast in gross and in percentage. Now, have you discovered that there is some difference between the figures shown on here and the figures shown on some of these exhibits?

A. That is correct. This compilation of figures here came from the reports which were originally sent to the members during those early periods.

Q. That is, you are talking about 1390?

A. Yes. I am talking about that exhibit.

Q. The total shipment figures in 1390 came from where?

A. They came from the reports which were originally sent in currently through those years, 1928, 1929, 1930, et cetera, to the Association.

Q. Were they sent by the Association to its members?

A. Yes. They were returned currently to all of the companies that were members and were reporting statistics to us during that period.

Q. And the company actual shipments and the company

forecast shipments were sent by the Association to its members?

[fol. 11739] A. Correct.

Q. Then these figures, variation from actual forecast, those were based on what?

A. We just calculated those showing the difference between the company actual and the company forecast.

Q. And those calculations were based upon what?

A. Just upon the——

Q. They were based upon reports currently made by members of the Association, were they not?

A. That is right.

Q. And the exhibits we offered in evidence just now were based upon what?

A. They were based upon for the period 1928 to 1933, inclusive; they were based upon the survey which was conducted under the Code Authority. Prior to '33 we did not have all companies as members of the Association, and as a matter of fact, I think there were one or two companies who were members but did not report statistics, so that our records for that period 1928 to '33, inclusive, were far from being complete. I think we estimated we had roughly about 82 percent of the volume, but that did not cover all classes of ware. As example, the fruit jar volume was not reported. We did not get those figures until the time of the Code Authority Survey. The West Coast companies were not members, or at least they did not report statistics to us, so the record which you refer to as 1390 covers only such statistics as were sent in to us currently during that period.

The Court: You consider the figures as a result of the [fol. 11740] Survey more accurate than the occasional reports made by the companies prior to that time?

The Witness: Yes, Your Honor, we do.

The Court: The figures in the 1390, I assume that is a stipulation, is it?

Mr. Day: It is not a stipulation, but they were figures that were introduced pursuant to a stipulation by the government.

The Court: But they are based upon the current report at that time?

The Witness: Yes, and I might add we had some com-

panies that reported part of the period and then dropped out, so there was that other inaccuracy.

Mr. Day: There is no stipulation as to the figures, but there is a stipulation as to this exhibit, and the purpose of introducing this exhibit was to show the variation of the actual production from the shipments and the forecast which is set down here at the bottom.

Q. From 1933 on, the examination you made, what did that show, if any variation, between the figures in 1390 and the figures in the exhibits we put in today?

A. Any variations were very minute, and we did do this: At the end of the year we would send out to the individual members and ask for any corrections they may have had during the year. For instance, they may have reported incorrectly on shipments, or they may have gotten ware returned to them which went back into their records. So we did make a little re-check at the end of each year, and [fol. 11741] any corrections that came in were added to our reports.

Q. But these exhibits we offered today, those charts and figures are based upon, first, the survey that you made in connection with the Code in 1933?

A. That is correct.

Q. From 1928 to 1933, and then upon actual reports from that time on?

A. Actual monthly reports from that time on.

Q. I want to ask you about one more thing. I have here Government's Exhibit 1338. It is a letter to Mr. C. D. King, General Glass Corporation, Lancaster, Ohio, signed Thatcher Manufacturing Company, by—I think Wellinghough wrote it, of Thatcher. It is dated August 10, 1932,

"Dear Mr. King: You will recall recent inquiry from Kennedy and Parsons Company, of Kansas City, regarding gallon jugs, and their statement to the effect that Knox was under your quotation. I took this up with Vic Hall and you will be interested in his reply which is attached, and which, when you have read, please destroy."

Now, were you here when Mr. Wellinghough testified about it?

A. Yes, sir, I was.

Q. Were you in the courtroom?

A. I was in the courtroom.

Q. Have you been able to find the letter from Vic Hall to which this letter refers?

A. You mean the letter I wrote Wellinghough?

Q. Yes.

A. No, I have not, sir. We did make a search of the [fol. 11742] files, but we had very little material going back that far.

Q. That is way back in 1932?

A. That is correct.

Q. What do you recall about the incident, if anything?

A. The only thing I recall is that I did have such a letter from Mr. Wellinghough. As to what I wrote in reply, I just haven't been able to recall any phase of it.

Mr. Day: I think that is all.

The Court: Any questions by other defendants? Mr. Apsey, have you had a preview of these exhibits?

Mr. Apsey: Yes, Your Honor.

The Court: Are you prepared to go ahead with the cross examination at this time?

Mr. Apsey: Yes, Your Honor.

Cross-examination.

By Mr. Apsey:

Q. I will take up first GCA Exhibit 6082, which is the chart of the total shipments compared with capacity, 1928 to '39. The heavy cross hatch area is labeled "Active Capacity". Now in deciding what furnaces are to be included within the computation of active capacity, is any account taken of these machines, both feeders and formers, of suction machines which are available to operate with those furnaces?

A. No, sir; there wasn't any thought there given to that, I wouldn't say. I might add that it was rather easy to distinguish between those furnaces because in most instances they had been—they had not operated them for quite some period of time, and there was nothing being done with them.

Q. Well, if there was a furnace which was not in operation [fol. 11743] and not equipped with sufficient feeders and formers to keep it in full operation, would it be included in active capacity?

A. Not if it was not equipped with the sufficient machines to run, or providing the company did not have sufficient

machines to put in there. It might not have had a machine ready on the line, but in order to consider a furnace in our active schedule we certainly knew that there were ample machines there to operate it.

Q. Well, how did you find that out, about the machine complement to your furnaces?

A. We made periodic checks, and at the time of the Code Authority Survey we went into that detail. The individuals that I speak of actually went over the blueprints of the furnaces and they reported the number of machines that were on hand.

Q. Did you send representatives to the various companies in regard to that?

A. We did. I might add that the machines——

Q. How frequently was that done?

A. That was done—oh, not every year, but I would say at least every other year.

Q. Now, there is another space above "Active Capacity", called "Idle Capacity". Now, in computing the furnaces that go into that idle capacity, was any account taken of the other features of the plant, which would make it available to operate, such as whether it was an obsolete plant, or matters of that nature?

A. Not to speak of, provided we knew that the plant had operated at one time, and we knew that the furnaces were [fol. 11744] there and complete—that is, they had not been torn out. And that is virtually as far as we went, because with the great excess capacity we had just considering the active furnaces, we had no thought that we would ever need those so-called idle ones.

Q. Well, did you compile your figures of furnaces included in the idle capacity solely from the reports made to you by your members?

A. That is right.

Q. And if there were such a thing as an obsolete plant, for example, you depended entirely on the member's report to find that out?

A. We did not actually go to these properties, but we had every reason to believe that we were getting the correct statement from our people, and I might add that during the course of this period we eliminated entirely quite a number of furnaces because we knew they had gone out of the industry entirely; they had been converted to other uses, or they had been dismantled.

Q. Now, I notice your charts and your figures stop with 1939. Do you have available here in court figures for the shipment and the lines indicated as idle capacity and total potential capacity for the subsequent years 1940 and 1941?

A. I don't have complete figures here, no. I stopped there because that was what I was asked to do.

Q. Well, do you have the figures of any of those lines for either of those years, 1940 or '41?

A. I have some data on furnaces here, I think which runs [fol. 11745] into '41.

Q. Well, could you give us those figures?

A. I could get those if I had the case there.

Q. Would it be feasible for you to, before the end of the week, to get us the figures of shipments also for those years?

* * * * * * *

The Witness: I would have to do that in New York, Your Honor. That can be done within the next two days.

The Court: Alright.

Mr. Apsey:

Q. Well, then passing to the other chart, Exhibit GCA-6084, Progress of Companies shipping less than 200,000 Gross in 1928, and 6087, Companies shipping more than 200,000 and Less than a Million Gross, and 6089, Companies [fol. 11746] shipping More than a Million Gross—those are what are known as ratio charts; isn't that right?

A. Well, I would say that we have shown index numbers for each year. In other words, we have used 1928 as representing 100, and have computed the index number or the percentage for each subsequent year.

Q. So that your line shows the percentage by which the company in question increased or decreased its business for each period?

A. As compared with '28.

Q. Calling 1928 100 percent?

A. That is right.

Q. But it does not purport to show the absolute grossage production of any company?

A. Well, we of course have the actual grossage right alongside on our tabulation.

Q. But I am talking about this—I just want to make sure that we understand what the chart shows.

A. The percentage does show the relationship as compared with '28.

Q. Now, if for example you took the absolute grossage of shipments for a large company like Owens-Illinois shown on GCA-6089, and attempted to draw a line showing the increase in grossage of such a company, and did the same thing with respect to a small company, shown on GCA-6084, you would expect that line representing the absolute grossage of shipment to rise much more—to a much more extreme extent with respect to the large company, Owens, than with [fol. 11747] respect to the small company, isn't that right?

A. That would depend on what type of chart you put them on. Now, if you put them both on one chart, that would be true.

Q. Yes, and it is also true, is it not, that some of the companies which are included in GCA-6087, that is, the medium group, if their production were taken today, or in the year 1939, would fall within the classification of companies of the group shown by GCA-6089, of shipping more than a million gross?

A. I think that is true, at least in one instance. I don't know whether it is true of more than that or not.

Mr. Day: What is that one?

The Witness: That is true of the Knox Glass Bottle Company.

Q. Now, I direct your attention to Exhibit 1717, which is already in evidence, a letter addressed to you by Mr. R. E. Kimball, dated June 1, 1935, and I direct your attention to the second paragraph of that letter which reads:

"I have talked to all the members here, and they feel that they want to continue with the wage and hour provisions, just as if the Code was in effect".

Now, this letter was written shortly after the NRA Code was declared unconstitutional, isn't that right?

A. That is correct.

Q. And the reference which I have just read is in connection with that, with the possible continuation of the Wage [fol. 11748] and Hour provisions after the conclusion of the Code?

A. Yes.

* * * * * * *

Q. The paragraph I want to call your attention to is this:

"I am sending a letter to each member of the West Coast Group, telling them of the opinion of the members and also suggesting that all of the other principles established by the Code, including the trade practices, should be voluntarily continued. This, of course, includes the pro-rationing of business".

Now, this Mr. Kimball, I take it, reported to you at some later time regarding the results of those inquiries; is that right?

A. He undoubtedly did. In other words, we had the regular correspondence.

Q. And those principles were continued by the West Coast Group—am I right in that respect?

A. That depends on which principles you mean. I might say in reply to this letter here—this was, of course, shortly [fol. 11749] after the Schechter case, and no one knew as to just what was going to happen to the NRA. There were requests made from the people that had been running the NRA that the Wage and Hour provisions be adhere to, and there was a question at that time as to whether or not it would be possible to set up some other plan in place of the Codes which had been declared unconstitutional. That was really the occasion for this letter here.

Q. Well, let's take up the practices specifically mentioned here—the pro-rationing of business. That was continued, was it not, after the Code?

A. Well, if you mean the percentages that were assigned by the Code Authority, of course they were never accepted by a great majority of the companies. We continued to show them on our statistical reports, that is true.

Q. Well, I am asking you what Mr. Kimball reported with respect to his inquiry which he talks about in this letter. He says that he suggested that all the other principles established by the Code, including the trade practices, should be voluntarily continued, and this, of course, includes the pro-rationing of business.

A. Well, as I recollect it, from this letter we had several things that were going to be continued. One was, of course the Wage and Hour provisions, and another was Schedule C, which had to do with Sunday operations. Third, was

other principles which included the pro-rationing. Now, so far as the pro-rationing is concerned, we didn't feel that it was ever really in existence. We had the form set up, [fol. 11750] possibly, but so far as it being actually in effect, we couldn't—we didn't believe that it was.

Q. Well, do you deny that it was continued by the Association after the close of the NRA?

A. I don't deny that the percentages were continued on our statistical forms from that period on to the summer of '39. Those percentages were shown each month.

Q. Well, now, Mr. Kimball takes this matter up with the people on the West Coast. Didn't you take it up with the people on the East Coast?

A. My recollection was that there was a meeting shortly after this Schechter decision, and at that time we were going to investigate to see whether or not there was some basis for carrying on certain trade practices, and as I recall, there was a committee organized or elected to inquire into that, to see whether or not the government was going to sponsor some broad plan of fair trade practice regulation.

Q. That was a meeting in Buffalo on June 24th?

A. Yes, that would be that meeting.

Q. And a vote was taken at that meeting, was it not, to continue voluntary adherence to the original Code Regulations for sixty days?

A. I think that is true. I don't know how broad that was stated. I know that they were definitely going to continue the Wage-Hour Provision and the Schedule C, which had to do with the Sunday operation. That was considered quite an important phase of the whole Code set-up.

Q. And then that was later continued, was it not—I mean [fol. 11751] permanently continued?

A. Which do you mean, Mr. Apsey?

Q. Well, the voluntary adherence to what Mr. Kimball called in this letter the pro-rationing of business that had been provided for under the Code Authorities?

A. I don't know as I would say that it was voluntarily continued. I think there is a question of whether it ever really got started, so far as being in effect, as I have explained, we did continue the set-up of showing the statistical figures.

[fol. 11752] Q. Well, now, I will direct your attention to Government's Exhibit 1719, which is another letter ad-

dressed to you by Mr. Kimball, dated September 30, 1935, and I direct your attention first to the first paragraph:

"In connection with giving out the statistics for 1934 and 1935 to go with the survey which we gave to the members covering the years 1928-1933, inclusive, I would like to get your advice on a little matter."

Do you recall that survey?

A. Yes, I do.

Q. What did that cover?

A. That was the survey conducted under the auspices of the Code Authority and it included a complete record of shipments and production, and the capacity data such as I explained in connection with these charts.

Q. And it showed the quotas that had been allotted to the various companies?

A. No, not in that survey. That survey was prior to the Code Authority.

Q. There were quotas allotted prior to that time, were there not?

A. No, so far as the West Coast was concerned the first figures we had from that group was in '33, at the time of this survey which was made that Mr. Kimball refers to in this letter.

Q. Now, Northwestern Glass Company was not a party to that survey, am I right? I direct your attention to the last [fol. 11753] paragraph there. I think that may refresh your recollection.

A. Northwestern were a party to the survey. Their figures were included along with all of the other companies when we made this check for the Code Authority.

Q. Then what does Mr. Kimball mean in the last sentence, next to the last paragraph, which says:

"Of course, we are going to have this thing probably come up again next year or always as long as we have Northwestern Glass omitted from the comparative statistics."

Mr. Day: I want to object to what Mr. Kimball means.

Q. Well, what in your opinion did he mean in making such a statement, if it is true Northwestern was in the survey?

A. I can explain that paragraph. At the time this Code Authority survey was made, it was made with the idea of

setting forecasts, or allotments, as the Code Authority called them. At that time the Northwestern Glass Company had been in operation only a short time and there was no experience to base any forecast figures on. So that we recommended to the Code Authority that no attempt be made to set such a figure for the Northwestern Glass Company. And that was agreeable, we having it tentatively understood that if the plan went into effect and later on the thing could be worked out for them, why, then, it would be done at that time. So that we had two calculations out there, we had give- companies that had presented figures which [fol. 11754] had been set up by the Code Authority, and those percentage figures would be only for, applied against the total for those five companies, and they would add up to 100%.

Now, Northwestern, you couldn't throw their figures into the total with the five companies, because if you did that, then you couldn't apply the percentages against the total.

Q. You are sure that is all it meant by that sentence?

A. That is my understanding, Mr. Apsey.

Q. Now I direct your attention——

The Court: Do you have quite additional cross-examination, Mr. Apsey?

Mr. Apsey: Well, I am pretty near the end. I judge I could finish in ten minutes.

The Court: All right, go ahead.

Q. I direct your attention to the last paragraph of Exhibit 1720. This is the letter to Mr. Kimball from you, dated October 7, 1935. You did write that letter, did you not?

A. Yes, I recall having written it.

Q. And that was written after the Code Authority had come to an end, October 7, 1935?

A. That is correct.

Q. In the last paragraph you say:

"It seems to me that the fact that Northwestern is not willing to come in on the allocation set up at this time gives [fol. 11755] us a logical reason for handling the matter that way."

Isn't it a fact, then, that the omission of Northwestern was due to their refusing to come in on the allocation that was set up by the Association at that time?

A. No, I would say there was no serious attempt made to get them in. My recollection of this is that it only referred to the statistical methods of showing those figures. We couldn't do two things with the same set of figures, and we had to either show a total for the five or we had to drop the percentages, and so the group out there elected to go along, showing, as I recall it, showing the total for the six companies—that is it.

Q. And there was an allocation set up by the Association on the West Coast at that time?

A. There was no change that I recall made at this time whatsoever. In other words, the figures that the Code Authority had set for the five companies, were continued, that is true, but there was no change in them; there was no figure set up for Northwestern, as far as I know no serious attempt made.

Q. How, then, do you explain your writing under this date to Mr. Kimball, "that Northwestern is not willing to come in on the allocation set up at this time"?

A. I don't recall just why I would have said "at this time" but I gather from this that—rather, I would say they were not willing to come in, of course, originally, because of their lack of experience or the lack of historical background for a percentage figure—so I presume what I meant here [fol. 11756] was there had been no change in that view, and so we continued to carry the figures as we had in the past.

Q. Now I direct your attention to Government's Exhibit 1726, which is a letter of December 27, 1937, from you to Mr. Kimball. You wrote that letter, Mr. Hall?

A. Yes, I recognize the letter.

Q. I direct your attention to the second sentence of the second paragraph, where it says:

"To combine the West Coast classes with those east of the Rockies would make it impossible for us to determine how each company was doing in relation to their forecast without keeping two sets of figures which, in addition to being a lot of work, would be confusing to the industry."

Now I ask you whether in view of that language, you were, in 1937, keeping at the headquarters of the Association, a record of the relation of the shipments of each company with respect to its forecast?

A. We weren't keeping any record other than the reports that were sent out each month to the member companies.

Q. Well, those reports did show that fact, did they not?

A. They showed the percentage which had been fixed by the Code Authority, and it showed the forecast in gross which is the application of that percentage against the total for the month and for the year, to date, and so on.

Q. And according to this letter, as I understand it, you were interested in keeping track of the relation of each company to its forecast?

A. My recollection of this is that was an argument, more [fol. 11757] than anything else, I used in connection with not wanting to throw these two groups of figures together. Prior to this letter Mr. Kimball had written on December 22 and had pointed out that the West Coast Group were very anxious to throw their figures on shipments and production stocks on hand, in with the figures for the group east of the Rocky Mountains, and we had had those figures separate all the way back to '28, and we thought it was logical to carry them separate, because, due to the distances and the high freight costs, there was not a great deal of shipping back and forth; in other words, the West Coast group are more or less off to themselves as a complete market, and we were very much opposed to throwing them in together, because we felt it would disturb the comparison all the way back, and, primarily, my recollection there is this, that the forecast was an argument I used there.

Q. Now, I show you Exhibit 1390, which is the figures for Owens-Illinois Glass Company coming from the files of Glass Container Association, and in the following exhibits down to 1481, I believe it is,—or somewhere along there,—are similar figures for all of the companies that were members of the Association?

A. That is correct.

Q. I direct your attention to paragraph 2, which said: "Company actual" and shows the shipments and the per cent of the total for each company?

A. That is right.

[fol. 11758] Q. And then to paragraph 3, which says, "Forecast for company"?

A. Yes.

Q. Now, did you keep these records regularly in your files?

A. We did.

Q. And you kept them right down to the year 1939?

A. That is right.

Q. What was the purpose of keeping that record?

A. There was no particular purpose one way or another. We had those figures as set up by the Code Authority, and while we didn't figure that they had ever become really effective, we just carried them along.

Q. So that they were just a little extra stenographic work for people who were keeping records; is that your position?

A. That is right. They were a percentage figure there that the company could compare their "Actual" with, if they cared to do so.

Q. I will show you Exhibit 1388, which is a letter addressed to you from the Thatcher Company with respect to a list, which says:

"You will recall that you asked me for a copy of our price lists for as far back as we have and I am enclosing the set-up beginning with January 1, 1918."

I don't know whether you were in the court room at the time, but Mr. Ackerman, when he was here, testified as to the use of these lists in making a chart in connection with the TNEC. Do you recollect that?

[fol. 11759] A. Yes, it was my recollection that after the TNEC——

Q. You need not go into any connection of it, because it is not necessary. If you recollect it, that is all I want to know.

A. Yes.

Q. When did you first learn about the proposed TNEC investigation?

A. I couldn't give a definite date on that. It is my impression it was December, '38, or just previous to that time.

Q. It is true, is it not, that investigators for the TNEC visited the office of the Glass Container Association?

A. That is correct.

Q. And made some investigation of the files there?

A. Yes, sir.

Q. Prior to the hearings in Washington?

A. Yes, sir.

* * * * * * *

[fol. 11760] Redirect examination.

By Mr. Day:

Q. You were asked about the TNEC investigation, and you stated that investigators came to the headquarters of your Association?

A. That is right.

Q. Do you know whether or not any evidence relating to the Association was offered before the TNEC?

A. There wasn't any evidence put in by witness or by representative. We did present, for the record only, a survey that we had prepared of the industry, showing the component parts, number of companies and classes of ware, and so on.

Mr. Day: I will say to the Court I am advised by Mr. Rose, who has examined the testimony before the TNEC, there was no testimony before the TNEC making any charge of any kind against the Association.

Q. And did that TNEC investigation have anything to do with the stopping of the forecast completely in 1939?

A. Not insofar as I have any knowledge, it did not.

Q. Now, you were asked about a letter, Government's Exhibit 1717, from Mr. Kimball to yourself, of June 1, 1935?

A. That is right.

Q. Now, when was the Schechter case opinion handed down, if you remember, knocking out the NRA?

A. It was the latter part of May, I don't know the exact date—I think the 25th of May.

Q. And this letter was written about five days after that?

A. That is right.

Q. Now, you have been asked about this sentence here: [fol. 11761] "This, of course, includes the pro-rationing of business and I hope that we can take this matter up and arrive at some sort of adjustment on Glass Containers, Inc's. position, so that we can really put this principle into operation."

Was there, so far as you know, anything done by the Association by the way of prorationing of business after this letter was received?

A. Not so far as I have any knowledge.

Q. Were there any new forecasts adopted at that time?

A. No, sir, there were not.

Q. Were there any new forecasts adopted or circulated, so far as you know, by the Association to its members at any time after the Code?

A. So far as I know there was not.

Q. I have here Government's Exhibit 600, already in evidence—Your Honor perhaps may remember it, because there has been so much evidence on it—that shows the industry forecast so much, and your forecast so much, July, 1935. Were those figures changed from 1935 to 1939?

A. No, sir, they were continued right through until, I think it was July of 1939.

Q. When they were stopped?

A. That is right.

Q. And that was at the time some question was raised about the Armstrong Company? Is that right?

[fol. 11762] A. That is correct.

Q. So far as you know, was there any attempt made to enforce these forecasts upon the members at any time?

A. There was no attempt that I know of, sir.

Q. Now, you were questioned also about a letter of October 7th to Mr. Kimball from yourself, which contains this statement (Exhibit 1720):

"It seems to me that the fact that Northwestern is not willing to come in on the allocation set up at this time gives us a logical reason for handling the matter that way."

Was there any new allocation or forecast or anything of that kind set up at that time?

A. No, there was not. There was nothing new at all, as far as forecasts went.

Q. You have been asked about this letter of December 27, 1937, from yourself to Mr. Kimball. Is there anything new set up at that time?

A. No. There wasn't anything new.

Q. Have you explained this letter as you understood it with relation to business on the East Coast and on the West Coast?

A. Yes. I think I have.

Q. Just one more question: Exhibit 1390, that has total shipments for various years and Company Actual for various years and Company Forecast. Then it has #4, Variation of Actual from Forecast in gross, so much, percentage

so much. Now, these first three figures were sent out, were they, by the Association?

[fols. 11763-11765] A. That is correct. They were sent out on the forms such as you just had there, 600 I think is the number.

Q. You testified earlier this afternoon those figures were based on reports made by the members of the Association?

A. That is right.

Q. And this last No. 4, do you know whether or not that was worked out afterwards from those figures for the purpose of this trial?

A. That was worked out, as I recall, for the purpose of this exhibit only. In other words, we did not calculate those figures monthly and we did not send them out.

Q. That is, you did not send out to any members of the Association, any statement of variation of actual from forecast?

A. No.

Q. Either in gross or percentage?

A. That is correct.

* * * * * * *

[fol. 11766] (At nine o'clock a. m. Tuesday, January 20, 1942, the trial was resumed.)

The Court: Ball Brothers may proceed.

Mr. McCallister: Before putting the witness on the stand, I have reached an understanding with plaintiff's counsel as to two letters—a letter of October 16, 1940, from Ball Brothers Company to Robert L. Warren, President of the Brockway Company, and a reply to that letter dated November 11, 1940, from the Brockway Company to Ball Brothers Company, and I would like——

The Court: Is the original dated October 16?

Mr. McCallister: October 16.

The Court: And the reply October 11th?

Mr. McCallister: November 11th, Your Honor. And I would like to offer them as exhibits in this case.

The Court: Without objection, they may be admitted. What are the numbers?

Mr. Green: The letter of October 16th is B-6093; the letter of November 11th is B-6094.

Mr. McCallister: I would like to read the letters, if you

please, and I would also like to substitute photostats for the originals, if I may.

The Court: That may be done.

(Letter dated October 16, 1940, Exhibit B-6093, then read by Mr. A. M. Bracken, and also Exhibit B-6094.)

Thereupon, the defendant Ball Brothers Company, further to maintain the issues upon its part, called as a witness [fol. 11767] on its behalf, F. J. Petty, who, having been first duly sworn, testified as follows:

Direct examination.

By Mr. McCallister:

Q. Will you state your name and residence?

A. F. J. Petty, Muncie, Indiana.

Q. By whom are you employed, Mr. Petty?

A. Ball Brothers Company at Muncie, Indiana.

Q. How long have you been in the employ of that company?

A. About seventeen and a half years.

Q. In what capacity are you now employed?

A. I am acting as Secretary of the Company.

Q. How long have you been secretary of the company, approximately?

A. I believe about two years.

Q. Have you any other duties in connection with the company, and if so, what?

A. Yes, I am supervising the sale of general line of glass containers.

Q. Are you one of the defendants in this cause?

A. I am.

Q. There has been the charge that price leadership exists in this glass container industry. What can you say as to that?

A. Well, I believe that it does. I can only speak for Ball Brothers Company. We do recognize the leadership, only in so far as the line would apply.

Q. What do you mean by price leadership?

A. Only a recognition of the experience they have had in manufacturing glass containers.

Q. Now, by "they", what do you mean?

A. The larger, older companies that are recognized in [fol. 11768] their respective lines.

Q. And you mean to say that you follow their lead in prices set?

A. No, indeed, we do not.

Q. Well, I am trying to get what you mean—what the term "price leadership" means to you?

A. Only the information that they would publish. We are not in any way obligated, nor have we ever agreed on prices.

Q. But it does mean to you that some company or individuals in the industry are recognized by Ball Brothers as a leader in connection with prices?

A. Yes, sir.

Q. And what do you mean by a leader in connection with prices?

A. Well, the Hazel-Atlas Glass Company have had the longest experience in manufacturing wide-mouth containers, and the Owens-Illinois of narrow-mouth containers.

Q. Well, what significance has that as to prices?

A. Only that they will publish their lists.

Q. And then what?

A. Which we can use, as we wish.

Q. And when those lists are published, do you publish your list?

A. Yes, sir.

Q. In connection with those lines of ware?

A. Only the lines of ware that we manufacture.

Q. The plaintiff in this cause alleges that price leadership in the glass container industry involves an agreement among the defendants; I take it it means among the various members of the glass industry. What can you say as to this charge?

A. There has never been any agreement on price with our company.

[fol. 11769] Q. As to this matter of price leadership, has there been any agreement as to that?

A. No agreement, no sir, to my knowledge. We have no verbal, written or implied agreement as to price.

Q. From the standpoint of prices of your product, how does Ball Brothers Company stand?

A. I beg pardon.

Q. From the standpoint of prices on products of Ball Brothers Company, how do they stand or hold themselves?

A. We publish our own lists which are given to our sales representatives. We have the privilege always of quoting whatever price we wish to quote. That is controlled only by our obligation to our customers and our cost.

Q. Do you know a man by the name of Ellerman?

A. Yes, sir.

Q. Will you tell me who he is?

A. He was formerly employed by our company in Texas in a sales capacity.

Q. I show you a letter which is in this case, identified as Government Exhibit 1211, and ask you to state whether it is a letter that you received?

Mr. McCallister: I note for the record that it is a letter of July——

The Witness: 1st, 1937.

Mr. McCallister: —from Mr. Ellerman to Mr. Petty.

Q. I call your particular attention to the following sentence in that letter: "This"—and the "this" refers to the quoting of prices on modernistic jars and pantry jars—[fol. 11770] "is not in accordance with our understanding." Will you tell me first about the matter of pantry jars and modernistic jars—what are they and how are they both classed?

A. Well, we classify them differently in our price schedule, and the prices given here were different for the two lines of jars.

Q. Are they packers' ware?

A. Yes.

Q. And your statement then is pantry jars had one price and modernistic jars another price; which was the higher of the two prices?

A. The modernistic.

Q. Now, what understanding was Mr. Elman referring to in that statement that I read to you?

A. Only that we had instructed him to quote these jars according to our own line.

Q. You had no understanding with any other company as to the price of either jar?

A. None whatever.

Q. I call your attention to a letter which is identified in this case as Government Exhibit 1212, which for the record I note as a letter of July 2nd, 1937, from Ball Brothers Com-

pany to Mr. Ellerman. State if you can who signed this letter—it is unsigned.

A. Yes. It was signed by Mr. Sutton, an assistant in the Sales Department at Muncie.

Q. Will you state your understanding of what that letter means?

[fol. 11771] A. Merely telling Mr. Ellerman the price that would be correct to apply to that particular kind of jar in our line, but he might not have understood.

Q. I show you a copy of a letter identified as Government Exhibit 1213, which is a letter of July 15, 1937, from Mr. Ellerman to Mr. Sutton, and I call your particular attention to the last sentence in that letter which reads as follows: "It looks to me that if the price is effective on a certain day, that any shipment made after that date new prices should apply, but they are booking the orders and shipping afterwards and we must do the same thing." In connection with that, did you have any understanding with the Owens-Illinois Company as to any prices there referred to?

A. No, sir.

Q. And what is your interpretation of that last sentence that I have just read?

A. Only that the prices given him, our prices, were effective as of a certain date. We know nothing about what the others were quoting. It was, I think, possibly might have been, just an excuse on the part of Mr. Ellerman in not getting orders at our prices.

Q. I show you a copy of a letter, Government Exhibit 1214, a letter of July 21, 1937, to Mr. R. A. Ellerman, from Ball Brothers, and I ask you who wrote that letter, if you know?

A. That was also written by Mr. Sutton.

Q. The letter includes the following: "We will secure the information requested relative to the Southern Coffee & Products Company, Oklahoma City, Oklahoma, and forward [fol. 11772] it to you as soon as possible." Do you know what information was requested there?

A. I don't believe I do, other than—

Mr. Apsey: It is stated in 1213. Exhibit 1213 is the request.

Mr. McCallister: 1215?

The Court: 1213.

Mr. Apsey: 1213 is the request.

The Witness: Well, only that we were trying to find out the price that they had quoted and had sold the ware at.

Q. Was there ever, so far as you know, any attempt to find out prices they were quoting before sales were made?

A. No, sir.

Q. Where you investigated a matter of prices by a competitor, what prices were you investigating?

A. Only the prices that they had quoted and sold at.

Q. Do you know whether the information that was promised in this last exhibit was ever sent?

A. I do not.

Q. Now, I show you a letter identified as Government Exhibit 1215, a letter from Ball Brothers Company to Mr. Ellerman of August 31, 1937, in which he says: "We have definite reason to believe that Owens-Illinois have not recently quoted or accepted any new business for shipment via rail with allowance of differential between rail and barge and all rail rates. If you obtain positive information that they have offered this proposal to any of your customers, we want you please to send us this information [fol. 11773] immediately." Who wrote that letter?

A. I wrote that.

Q. Will you explain the letter, please?

A. We are in constant communication with customers all over the territory, and customers to whom they had been allowing the difference between all rail and barge and rail rates told us that they were no longer receiving it. We allow in our list prices only the carload rate of freight.

Q. And you thought there was that if Owens-Illinois were giving a price concession, or rather, had given a price concession on sales, you wanted to know it?

A. Yes.

Q. Is that right?

A. Yes.

Mr. McCallister: That is all, Your Honor.

[fol. 11774] By the Court: You may cross-examine.

Cross-examination.

By Mr. Apsey:

Q. Mr. Petty, have you also been a director of the Ball Brothers Company?

A. Yes, for a number of years.

Q. Were you present at any meeting of the board of directors at which the contract with Hartford-Empire Company, of March 25, 1933, was ratified or authorized?

A. No, I was not a director at that time.

Q. Were you present in any other capacity at any directors' meeting where it was ratified?

A. No, sir.

Q. Now, you have testified that price leadership does exist in the glass industry. That is correct, I believe?

A. Well, no, I wouldn't speak for the others. I merely think that it does.

Q. Well, we are only asking you for your best understanding.

A. So far as our company is concerned, we do recognize their experience in manufacturing a more complete line than we.

Q. Well, that is a matter well-known through the glassware industry, that price leadership does exist?

A. I believe that it is.

Q. It is a matter of common knowledge?

A. Yes.

Q. And all of the companies,—most of the companies at any rate, so far as you know, in the industry,—comply with that system of price leadership?

Mr. Middleton: I object, Your Honor.

Mr. McCallister: Yes, I do, too.

[fol. 11775] The Court: Well, he says he can only answer for his company.

The Witness: I can only answer for our company.

Q. You said it was a matter of common knowledge that price leadership existed?

A. Well, only insofar as we—I believe that other companies recognize their leadership.

Q. Other companies recognize the leadership of Ball Brothers in fruit jars, isn't that right?

Mr. Middleton: We object.

The Court: Overruled.

Mr. McCallister: Your Honor, I would say this is outside of the direct examination. This man has had nothing to do with fruit jars.

Mr. Apsey: He testified about price leadership.

The Witness: Not in fruit jars. I am not sufficiently familiar with it.

Q. You don't know whether other companies follow you?

A. I am not in the fruit jar end of it. I don't know what others do.

Q. You, however, do follow the leadership of other companies in respect to the lines of ware, the general line of glass containers which you say you supervise the sale of?

A. Only the items we can manufacture.

Q. Well, that is my question: and you follow the leadership of what companies in that connection?

[fol. 11776] A. Of Hazel-Atlas Glass Company for wide mouth containers, and the Owens-Illinois Company for narrow mouth containers.

Q. And are there any other companies who are leaders in that field, whom you follow?

A. No, they are the only ones.

Q. Now, price leadership, I believe you testified in substance, indicates that certain companies who have been long in the field, set the prices, which are followed by the other companies; is that right?

Mr. Middleton: I object.

A. No.

Q. Will you tell us again just what you mean by price leadership?

A Only from their longer experience and knowledge they can establish whatever price they please, and we, likewise, do the same. We are not in any way obligated.

Q. I didn't ask you whether you were obligated, I asked you whether as a matter of fact in most cases you have followed their prices?

A. Yes, we do on the items we make.

Q. That is right, that is all I asked. Now, in order to do that, it is necessary, is it not, to know in advance what the price of the leaders are?

A. It is not.

Q. How can you follow a price you do not know about?

A. Because we can announce when we secure the information.

Q. But you make your announcement after you secure the information from them?

A. Afterwards, yes.

[fol. 11777] Q. Therefore it is necessary before you announce your prices to know what prices the others are asking, isn't that right?

A. Yes.

Q. So it is not exactly accurate to say you never make any attempt to find out prices being quoted before you make your sales?

A. I don't quite understand your question.

Q. Well, it is necessary, is it not, before you set a price, for the Ball Brothers to know what the price is that is being set by the leaders in the industry?

A. Not necessary, no.

Q. Well, I believe you just testified that leadership means getting the price of the other company in advance, before you set your price?

A. Well, that is not necessary. We quote any price we please—that we want to.

Q. Customary—let's say it is customary, is it not?

A. Not at all. We simply accept, we take their list and fix our own prices.

Mr. McCallister: I think you mean your own list price?

The Witness: Our own list, yes.

Q. As a general rule, the prices which you make are not any lower than the prices which the price leader sets?

A. That is correct.

Q. So it is necessary, before setting your price, to have the price that the price leader sets, isn't that right?

A. If we make an item that is our own, we set our own price.

Q. I am talking about the items which the leaders make. [fol. 11778] A. General items, I think that is.

Q. That is correct for the general items that both you and the leaders make?

A. Yes.

* * * * * * *

The Court: How do you desire to proceed? Does Owens-Illinois desire to proceed at this time, or Hartford?

Mr. Williams: We would sooner go ahead, Your Honor, and I would like at this time to present the argument about which we have spoken with respect to evidence showing infringement. I have prepared a brief but it has gotten sidetracked in some fashion, and time has shortened up; but I can speak from notes.

Mr. Isseks: We would like to know how the issue is going to come up, if we may.

[fols. 11779-11814] Mr. Williams: The issue will come up in questions propounded to the next witness.

Mr. Isseks: Let's wait for the questions to be propounded.

Mr. Williams: The direct examination will go to two points, as to the reception of evidence, and there will only be three or four questions, it won't take more than ten or fifteen minutes to answer them. It is of the same type as the evidence given by Mr. Peiler, describing the structure and operation of only two glass machines. We wish to urge the reception of that evidence and also have Your Honor to say that the evidence introduced by Mr. Peiler, which was received only for the purpose of showing the state of mind, be received as offered for all purposes, one of the purposes being to show infringement.

I think I can argue that question completely in about fifteen minutes.

Mr. Isseks: My suggestion is to wait until the question is asked, so Your Honor can rule on the particular question, unless counsel wishes solely to direct himself to the re-opening of the Peiler testimony. It seems to me the orderly procedure would be to wait until the objection is made.

Mr. Williams: I have told you what it would be. If you prefer to wait, I can do so. I think now would be the opportune time.

The Court: I have no particular desire in the matter. If counsel wants to proceed, he may do so.

* * * * * * *

[fol. 11815] The Court: You may proceed. You may call your witness.

Mr. Wood: This witness is going to testify for about ten minutes on the subject to which Mr. Williams' remarks were addressed, in other words, the comparison of the Knox-O'Neill Machine with a certain Soubier patent. Do you wish us to proceed with that testimony?

The Court: I think that is the proper way to reach the question.

Thereupon, the Defendant Owens-Illinois Glass Company, called as a witness, LEONARD D. SOUBIER, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Wood:

Q. Will you please state your name, age, residence and occupation?

A. Leonard D. Soubier, 47, 2235 Castlewood, Toledo, Ohio. Consultant for Owens-Illinois Glass Company.

Q. By whom are you employed at the present, Mr. Soubier?

A. Owens-Illinois Glass Company.

Q. Are you employed on a full time basis?

A. No. I am not.

Q. Do you devote part of your time to other interests?

A. I devote approximately 25% of my time to personal interests.

Q. And you have for several years past?

A. Since about 1935 or '36.

Q. When did you go to work for the Owens-Illinois Glass Company?

[fol. 11816] A. February, 1911.

Q. What were your duties at that time?

A. I started in the engineering department as a blueprint boy.

Q. How old were you at the time?

A. Seventeen.

Q. What did you do next?

A. After some more schooling I finally worked up in the engineering department eventually, reaching the point of being designer.

Q. Can you speak a little louder, Mr. Soubier? How long were you a designer?

A. From about 1915 on through 1918, at which time I left the engineering department and went into the Patent Department of Owens Bottle Machine Company, and remained in the Patent Department until 1929, when I again went back to the engineering in charge of the new development program, continuing with that until October 1932, when I became incapacitated for a year or so, and then returned to the main office as a consultant for various divisions, such as the Can Division and the Glass Container Manufacturing Division, Glass Block Division, and at one time in the Glass Wool Division.

Q. What has been the nature of the consulting service which you have given the various Owens-Illinois Departments; just in general?

A. In general, helping in working out all new machinery particularly, and in some cases in connection with patents or patent infringement, and things of that nature.

Q. Are you a registered patent solicitor?

[fol. 11817] A. Yes, since 1922.

Q. I show you copy of Patent No. 1,705,341, which I believe was introduced in evidence during the testimony of Mr. Lorenz. The inventor of the patent is L. D. Soubier. Its issue date is March 12, 1929. I will ask you whether or not you are the Soubier of this patent?

A. Yes, I am.

Q. Will you state very briefly just what the patent covers?

Mr. Isseks: We object, Your Honor.

The Court: What is the purpose of this, Mr. Wood?

Mr. Wood: I am next going to show him the patent to Kinker, No. 1,980,343, which discloses the transfer device of the Knox-O'Neill Machine, this Kinker patent being one of the several patents which Owens bought from O'Neill on May 6th, 1933, and by the testimony of the witness establish the fact that the transfer device of the Knox-O'Neill Machine was covered by the Soubier patent. I may add that at the time of the O'Neill purchase by Owens there was pending in this District Court the suit of Owens-Illinois Glass Company vs. The O'Neill Machine Company and Frank O'Neill, Defendants, for infringement of this particular patent.

Mr. Isseks: We object to that line of testimony, Your Honor.

The Court: I will sustain the objection.

Mr. Wood: May we make a short and formal offer?

[fol. 11818] The Court: You may.

Mr. Wood: To show the substance that I have just stated. I will not restate it. I take it that Your Honor's present ruling on the question goes to the substance of the argument made by Mr. Williams?

The Court: That is correct. The Court is maintaining the position that he took after the submission of the written arguments and when the issue first arose.

Mr. Wood: May we have the two mechanisms described to show the state of mind?

Mr. Isseks: We still object, but I assume Your Honor is not going to change his ruling?

The Court: I am not going to change my mind on that.

Q. Will you please then very definitely describe the disclosure of your patent on the transfer device?

A. This patent No. 1,705,341, March 12, 1929, discloses a two-table machine, that is, the two tables spaced horizontally apart, rotating about vertical columns, and arranged to transfer a formed blank or parison from the parison forming mold to the finishing table on the finishing mold table, and maintain the parison in proper alignment during its transfer from one mold to the other.

Q. What do you mean by proper alignment?

A. That is to keep the mold seam formed by the blank mold in the formation of the parison in exact alignment with the seam in the blow mold in order that there will be only one seam appearing on the bottle, thereby making it a [fol. 11819] commercially acceptable article.

Q&. Can you state whether or not there is any problem in respect to transferring the parison between two continuously rotating tables?

A. There is a vital problem there in that you must, as I stated before, keep the seams of the two different molds in proper alignment, and you must keep the parison in control at all times. Otherwise that parison is apt to be pinched by the closing of the parison mold, or some other damage is apt to be done, and unless you have a good parison to be blown to final form, you cannot have a good bottle.

Q. What path must it be necessary to have the parison follow in order to effect a successful transfer; what path must it travel?

Mr. Isseks: Of course, Your Honor, I assume this does not go to validity, or infringement.

A. The parison must, in order to make a good transfer, follow the line of mold movement of the finishing mold for a given period of time.

Q. That is it must leave the arc of the first table, and for a short period follow the arc of the second table?

A. That is right.

[fol. 11820] Mr. Wood: As I said, Your Honor, the patent which the witness has been describing was introduced

during the Lorenz testimony as the mechanism used by Hartford, I believe in their No. 12 machine.

Q. I show you patent to Kinker 1,980,343,—Exhibit O-6095, and ask you if you can state just what that patent discloses?

A. This patent is directed specifically to a device for transferring parisons from the blank forming molds to the finishing molds of a continuously rotating two-table machine. It embodies mechanism to cause the parison, during the transfer period, to follow the finishing mold arc for a period of time sufficient to close the finishing mold and consummate the transfer. It also maintains the parison in alignment, that is as to the mold seams of the two different molds.

Q. Does the Kinker patent disclose the mechanism actually used on the commercial Knox-O'Neill machine?

A. It discloses the mechanism used on the first of the Knox-O'Neill machines.

Q. And you have observed the mechanism used on the Knox-O'Neill machines at various times?

A. Yes, I have.

Q. Just what device is there—is there a device that is common both to your patent and to the Kinker patent for effecting the transfer?

Mr. Isseks: I object. He can describe it, even under Your Honor's ruling.

[fol. 11821] The Court: He may answer.

(Question read.)

A. Yes, there is a cam in both machines for controlling the transfer of the parison and causing it to follow the arc of the finishing mold.

Q. Is that any particular type of cam?

A. It is a re-entrant type of cam. The cam follows the arc of the finishing mold table.

Q. That is, by making the parison first follow one arc and then follow the other arc; is that correct?

A. Yes.

Mr. Wood: While Mr. LaFrance was on the stand I suggested we might simplify things by simply putting in a set of lists of the patents on the Owens suction machine and the dates of expiration.

I offer the Kinker patent in evidence as Exhibit O-6095.

Mr. Isseks: I assume Your Honor is admitting it only for the limited purpose?

The Court: It may be admitted.

Mr. Wood: I had the witness prepare a list of the patents covering the individual Owens machines. I want to show when those patents expired, and Mr. Isseks very kindly says he will permit it to go in without having the witness take the time to apply the patents to the individual machines by oral testimony.

* * * * * * *

[fol. 11822] Mr. Wood: I offer it as Exhibit O-6096, list of Owens patents applying to the Owens suction machine, the first sheet being the patents applying to the "A" machine, illustrated by photograph O-5959. The reporter can just copy the rest of them, because it will take some few minutes to read them.

Mr. Isseks: That is satisfactory with us.

Mr. Middleton: How many pages?

Mr. Wood: Twelve pages.

The Court: It may be admitted.

Patents Applying to the "A" Machine
Illustrated by Photograph O-5959.

Patent No.	Issued	Expire	Patentee	Subject
759,742	5-10-04	5-10-21	M. J. Owens	Suction Gathering and Blowing Method (Basic). Hand Pump Demonstrator.
766,768	8- 2-04	8- 2-21	M. J. Owens	Machine for Suction Gathering and Blowing.
774,690	11- 8-04	11- 8-21	M. J. Owens	Revolving-Pot & Machine in Combination.
870,664	11-12-07	11-12-24	W. E. Bock	"A" Machine.

[fol. 11823]

Patents Applying to the "AC" Machine
Illustrated by Photograph O-5960.

759,742	5-10-04	5-10-21	M. J. Owens	Suction Gathering and Blowing Method.
766,768	8- 2-04	8-21-21	M. J. Owens	Machine for Suction Gathering and Blowing.
774,690	11- 8-04	11- 8-21	M. J. Owens	Combination for Revolving Pot & Machine.
852,097	4-30-07	4-30-24	W. E. Bock	Cut-off Scar Elimination (Mechanism).
854,098	4-30-07	4-30-24	W. E. Bock	Cut-off Scar Elimination (Method).
852,099	4-30-07	4-30-24	W. E. Bock	Mold Adjustment.
870,664	11-12-07	11-12-24	W. E. Bock	"A" Machine.

Patents Applying to the "AD" Machine
Illustrated by Photograph O-5961.

Patent No.	Issued	Expire	Patentee	Subject
759,742	5-10-04	5-10-21	M. J. Owens	Suction Gathering & Blowing Method.
766,768	8- 2-04	8-21-21	M. J. Owens	Machine for Suction Gathering & Blowing.
774,690	11- 8-04	11- 8-21	M. J. Owens	Combination for Revolving Pot & Machine.
852,097	4-30-07	4-30-24	W. E. Bock	Cut-off Scar Elimination (Mechanism).
852,098	4-30-07	4-30-24	W. E. Bock	Cut-off Scar Elimination (Method).
852,099	4-30-07	4-30-24	W. E. Bock	Mold Adjustment.
870,664	11-12-07	11-12-24	W. E. Bock	"A" Machine.

[fol. 11824]

Patents Applying to the "AE" Machine
Illustrated by Photograph O-5371.

759,742	5-10-04	5-10-21	M. J. Owens	Suction Gathering & Blowing Method.
766,768	8- 2-04	8- 2-21	M. J. Owens	Machine for Suction Gathering & Blowing.
774,690	11- 8-04	11- 8-21	M. J. Owens	Combination of Revolving Pot and Machine.
852,097	4-30-07	4-30-24	W. E. Bock	Cut-off Scar Elimination (Mechanism).
852,098	4-30-07	4-30-24	W. E. Bock	Cut-off Scar Elimination (Method).
852,099	4-30-07	4-30-24	W. E. Bock	Mold Adjustment.
870,664	11-12-07	11-12-24	W. E. Bock	"A" Machine.

Patents Applying to the "AL" Machine
Illustrated by Photograph O-5962.

759,742	5-10-04	5-10-21	M. J. Owens	Suction Gathering & Blowing Method.
766,768	8- 2-04	8- 2-21	M. J. Owens	Machine for Suction Gathering & Blowing.
774,690	11- 8-04	11- 8-21	M. J. Owens	Combination of Revolving Pot and Machine.
852,097	4-30-07	4-30-24	W. E. Bock	Cut-Off Scar Elimination (Mechanism).
852,098	4-30-07	4-30-24	W. E. Bock	Cut-Off Scar Elimination (Method).
852,099	4-30-07	4-30-24	W. E. Bock	Mold Adjustment.
870,664	11-12-07	11-12-24	W. E. Bock	"A" Machine.

[fol. 11825]

Patents Applying to the "AN" Machine
Illustrated by Photograph O-5963.

759,742	5-10-04	5-10-21	M. J. Owens	Suction Gathering & Blowing Method.
766,768	8- 2-04	8- 2-21	M. J. Owens	Machine for Suction Gathering & Blowing.
774,690	11- 8-04	11- 8-21	M. J. Owens	Revolving Pot & Machine in Combination.
852,097	4-30-07	4-30-24	W. E. Bock	Cut-Off Scar Elimination (Mechanism).
852,098	4-30-07	4-30-24	W. E. Bock	Cut-off Scar Elimination (Method).
852,099	4-30-07	4-30-24	W. E. Bock	Mold Adjusting.
870,664	11-12-07	11-12-24	W. E. Bock	Continuous Rotation and Special Features—"A" Machine.

Patents Applying to the "AR" Machine
Illustrated by Photograph O-5964.

Patent No.	Issued	Expire	Patentee	Subject
759,742	5-10-05	5-10-21	M. J. Owens	Suction Gathering & Blowing Method.
766,768	8- 2-04	8- 2-21	M. J. Owens	Machine for Suction Gathering and Blowing.
744,690	11- 8-04	11- 8-21	M. J. Owens	Revolving Pot and Machine in Combination.
852,097	4-30-07	4-30-24	W. E. Bock	Cut-Orr Scar Elimination (Mechanism).
852,098	4-30-07	4-30-24	W. E. Bock	Cut-Off Scar Elimination (Method).
852,099	4-30-07	4-30-24	W. E. Bock	Mold Adjusting.
870,664	11-12-07	11-12-24	W. E. Bock	Continuous rotation and Special Features (A).
1,063,108	5-27-13	5-27-30	W. E. Bock	Automatic Knockout for Bottles.
1,185,687	6- 6-16	6- 6-33	R. LaFrance	Single Head Dipping (AN) (AR).

[fol. 11826] Patents Applying to the "AQ" Machine.

759,742	5-10-04	5-10-21	M. J. Owens	Suction Gathering & Blowing Method.
766,768	8- 2-04	8- 2-21	M. J. Owens	Machine for Suction Gathering & Blowing.
774,690	11- 8-04	11- 8-21	M. J. Owens	Revolving Pot & Machine in combination.
852,097	4-30-07	4-30-24	W. E. Bock	Cut-Off Scar Elimination (Mechanism).
852,098	4-30-07	4-30-24	W. E. Bock	Cut-Off Scar Elimination (Method).
852,099	4-30-07	4-30-24	W. E. Bock	Mold Adjusting.
870,664	11-12-07	11-12-24	W. E. Bock	Continuous Rotation and Special Features (A).
1,063,108	5-27-13	5-27-30	W. E. Bock	Automatic Knockout for Bottles.
1,185,687	6- 6-16	6- 6-33	R. LaFrance	Single Head Dipping (AN) (AR).

Patents Applying to the "AV" Machine
Illustrated by Photograph O-5965.

759,742	5-10-04	5-10-21	M. J. Owens	Suction Gathering & Blowing Method.
766,768	8- 2-04	8- 2-21	M. J. Owens	Machine for Suction Gathering & Blowing.
774,690	11- 8-04	11- 8-21	M. J. Owens	Revolving Pot & Machine in combination.
852,097	4-30-07	4-30-24	W. E. Bock	Cut-Off Scar Elimination (Mechanism).
852,098	4-30-07	4-30-24	W. E. Bock	Cut-Off Scar Elimination (Method).
852,099	4-30-07	4-30-24	W. E. Bock	Mold Adjusting.
870,664	11-12-07	11-12-24	W. E. Bock	Continuous Rotation and Special Features (A).
1,063,108	5-27-13	5-27-30	W. E. Bock	Automatic Knockout for Bottles.
1,185,687	6- 6-16	6- 6-33	R. LaFrance	Single Head Dipping. (AN) (AR)

[fol. 11827]

Patents Applying to the Modernized "AN", "AR", "AQ", and "AV" Machines or "ARC" Machine.

Patent No.	Issued	Expire	Patentee	Subject
759,742	5-10-04	5-10-21	M. J. Owens	Suction Gathering & Blowing Method.
766,768	8- 2-04	8- 2-21	M. J. Owens	Machine for Suction Gathering & Blowing.
774,690	11- 8-04	11- 8-21	M. J. Owens	Revolving Pot & Machine in combination.
852,097	4-30-07	4-30-24	W. E. Bock	Cut-Off Scar Elimination (Mechanism).
852,098	4-30-07	4-30-24	W. E. Bock	Cut-off Scar Elimination (Method).
852,099	4-30-07	4-30-24	W. E. Bock	Mold Adjusting.
870,664	11-12-07	11-12-24	W. E. Bock	Continuous Rotation and Special Features (A).
1,063,108	5-27-13	5-27-30	W. E. Bock	Automatic Knockout for Bottles.
1,185,687	6- 6-16	6- 6-33	R. LaFrance	Single Head Dipping. (AN) (AR)

Patents Applying to the "AT" Machine Illustrated by Photograph O-5986.

759,742	5-10-04	5-10-21	M. J. Owens	Suction Gathering & Blowing Method.
766,768	8- 2-04	8- 2-21	M. J. Owens	Machine for Suction Gathering & Blowing.
774,690	11- 8-04	11- 8-21	M. J. Owens	Revolving Pot and Machine in combination.
852,097	4-30-07	4-30-24	W. E. Bock	Cut-off Scar Elimination (Mechanism).
852,098	4-30-07	4-30-24	W. E. Bock	Cut-Off Scar Elimination (Method).
852,099	4-30-07	4-30-24	W. E. Bock	Mold Adjusting.
870-664	11-12-07	11-12-24	W. E. Bock	Continuous Rotation and Special Features (AE).
1,063,108	5-27-13	5-27-30	W. E. Bock	Automatic Knockout for Bottles.

[fol. 11828]

1,185,687	6- 6-16	6-16-33	R. LaFrance	Single Head Dipping. (AN) (AR)
1,322,726	11-25-19	11-25-36	M. J. Owens	"AT" Carboy Machine.
1,348,365	8- 3-20	8 -3-37	R. LaFrance	"AT" Knockout.

Patents Applying to the "CA" and "CB" Machines.

852,097	4-30-07	4-30-24	W. E. Bock	Cut-Off Scar Elimination (Mechanism)
852,098	4-30-07	4-30-24	W. E. Bock	Cut-Off Scar Elimination (Method)
852,099	4-30-07	4-30-24	W. E. Bock	Mold Adjusting.
870,664	11-12-07	11-12-24	W. E. Bock	Continuous Rotation and Special Features (A).
1,063,108	5-27-13	5-27-30	W. E. Bock	Automatic Knockout for Bottles.
1,185,687	6- 6-16	6- 6-33	R. LaFrance	Single Head Dipping. (AN) (AR)
1,277,607	9- 3-18	9- 3-35	R. LaFrance	Air & Vacuum Distributor Head (AQ) (AV) (AR) (AN).
1,299,482	4- 8-19	4- 8-36	R. LaFrance	Blank Straightener (Air).
1,319,098	10-21-19	10-21-36	R. LaFrance	Improved Bottle Knockout.
1,399,203	12- 6-21	12- 6-38	O. H. Flint	Mold Centering Device.
1,439,355	12-19-22	12-19-39	T. A. Bragg	Mold.
1,547,439	7-28-25	7-28-42	M. J. Owens	Horizontal Mold Arrangement for "CA" Machine.
1,549,920	8-18-25	8-18-42	J. H. Nigh	Mold Centering Device.
1,607,643	11-23-26	11-23-43	H. A. Rohrich	Cooling Nozzles for "CA".

[fol. 11829] Q. Now, Mr. Soubier, was there any set of patents which your organization considered dominant and basic covering the fundamental principles of the original Owens machine?

A. Yes, there was.

Mr. Isseks: Your Honor is taking this on the same basis?

The Court: Correct.

A. (Continued) There was such a set of patents, the Owens patents.

Q. Will you please read from the list of the patents applied to the "A" machine, will you read what those patents are that your organization considered fundamental and dominant?

A. The M. J. Owens patent 759,742 of May 10, 1904, which covered the original bicycle pump suction gathering device; the Owens patent 766,768 of August 2, 1904, which covered the original suction machine; and the M. J. Owens patent 774,890 of November 8, 1904, which covered the revolving pot and machine in combination.

Q. Now, was the Bock patent 870,664 which is on the list of patents applying to the "A" machine, of different character from the Owens patents previously mentioned?

A. Yes, it was different. It was drawn to the specific structure of the first "A" type suction machine; that is, it covered specific structural features.

Q. What did the first three patents cover in comparison to the patent on the structural features?

A. The first three patents covered, broadly, the method of [fol. 11830] sucking the glass into the mold from a pool of molten glass and cutting off the charge from the pool and thereafter expanding the blank into a finished article.

Q. And the Bock patent covered a specific machine for so doing?

A. Yes, a specific type of machine for so doing.

Q. Now, did any of these patents you have mentioned disclose generally the stationary pot?

A. Yes, the first Owens—or the second Owens patent, 766,768, disclosed the stationary pot.

Q. Did any of these patents disclose an individual dip-head?

A. Yes, I believe the Owens patent 774,890.

Q. Now, I will ask you to turn briefly to the next page, patents applying to the "AC" machine, and there are some

patents listed in addition to those which you previously mentioned. Can you very generally tell us the nature of those patents?

A. The three additional patents listed on this "AC" machine over and above those listed on the "A" machine are directed to specific structural improvements added to the "A" machine, and thereby making it what we called it, an "AC" machine, or another type of machine. These patents are directed to specific mechanisms, for example, the Bock mold and adjustment patent is directed, as I recall, to a means for aligning the molds, and so forth, in perfect alignment with the neck mold, and not form a distorted parison.

Q. Now, will you please skip to the page of this exhibit on the "AE" machine, and state the date of expiration of [fol. 11831] the last patent on the "AE" machine? It is on the sheet, I simply wish it in the record as well.

A. Well, the last patent that covered the "AE" machine as it was used, was the Bock patent 870,664, which expired November 12, 1942, and that was the patent directed to the specific machine structure. The broad patents, of course, expired in '21.

Q. Will you turn to the page on the "AB" machine. I call your attention to the LaFrance patent 1,185,687, issued 6-6-16, expiring 6-6-33, and ask you to state rather briefly just what that patent covered.

A. That LaFrance dip-head patent related to the specific structure used in the original ten-arm Owens suction type machine. The claims were directed specifically to vertical guide-ways in which the blank gathering mold moved up and down in gathering the charge, and it was a patent specific to that structure and not a broad coverage.

Q. Did the fact that one of the earlier patents showed an individual dip-head have anything to do with the limited nature of the protection afforded by the LaFrance patent?

A. Yes, it was not new to have individual dip-heads, because of the showing in one of the old Owens patents of 1904.

Q. Now, are you familiar with efforts on behalf of the Owens-Illinois Glass Company to develop the Owens suction machine after the merger in 1929?

A. With the exception of the year 1932, I am, yes.

Q. And have you seen the results of the work during that year?

[fol. 11832] A. Yes, I am.

Q. Now, can you just tell us, generally, the nature of the change made in the Owens suction machine over that period?

A. The changes from that time in the Owens machine were improvements to mechanism, such as means for adjusting the mold shoes, and things of that nature, which were simply mechanical adjustments, probably the strengthening of the machine parts to withstand the higher speed; but after that they went into the program of developing the technique of the use of these mechanisms. In other words, we had a tool, all right enough, up to probably '29, but we didn't know a whole lot about using the tool, and then we started to develop the technique of using it by supplying such things as, oh, the adjustable cams, which permitted the operator to adjust the machine while in motion and permitted him to do things which the old hand-gatherer would do when he would gather a charge of glass on a blowpipe. In other words, the operator, with the adjustable cam, could open the blank mold at any given point he desired by changing the position of the cam, when it was operating, and he knew whether he had a good blank, and didn't have to go to a lot of trouble to make the adjustment. Up to the advent of these adjustable cams it was just a matter of guesswork. The operator had to stop the machine and change the adjustment and spend a lot of time and lose a lot of ware before getting it right. The adjustable cam provided the technique for the making of good bottles. That was one of the major improvements.

[fol. 11833] Q. The general principal of adjustable cams on glass-making machinery,—that is, cams adjustable while the machine was in operation,—was not a new principle developed by Owens, was it?—I mean broadly speaking.

A. Broadly speaking, no; the adjustable cams are covered by patent, of course, but the patents are specific to the particular structure we developed. The same objects and results could be accomplished by a little different mechanism than we have, which is not covered by patent.

Q. Now, are the Owens suction machines used by Owens at the present time basicly different in design from the machine such as the AR of 1912, and the AQ of 1914?

A. No, as a matter of fact a great many of the machines are the same identical machines built from 1912 to 1914.

Q. But some of them have been rebuilt in certain respects?

A. They have been rehabilitated, and probably heavier castings supplied in different places, together with the other improved operating mechanism on them.

Q. How about the change in materials?

A. A good deal of change in materials.

Q. For what purpose?

A. Well, some of these alloys that will stand higher temperatures, probably oil-less bearings, or something of that nature, has been added to them.

Q. What is the general nature of Owens' present existing patent protection on the improvements on Owens suction machines?

A. As a whole, I would say the Owens patent protection [fol. 11834] is specific, to the particular mechanism that we use.

Q. And the same general object could be accomplished by other means?

A. That is right.

Q. Now, has this work on the Owens suction machine since the time of the merger resulted in increased speeds or lower production costs?

A. Well, they have increased speeds, I would say, probably in the neighborhood of 20%, and they have, of course, reduced costs considerable due to the speeding up and the multiple mold production.

Q. Now, has that necessitated any rebuilding or rehabilitation of plant to take care of the increased productivity of the Owens suction machine?

A. Yes. The original bottle-handling devices that Owens had used exclusively with the Owens machine was found to be inadequate, very much so with the increase in speed and production, which necessitated going to different types of lehrs and longer lehrs, all of which led to changes in buildings, and the necessity for new types of bottle-handling equipment.

Q. Why would it be necessary to change buildings?

A. Well, when you get into a program where you have machines of high speed with the old-fashioned Owens lehr, which was a rather compact device, and you stretch out your operating equipment, then you have to go into different building equipment to handle it.

Q. Do increased speeds make greater pull on the furnace

that occasioned different problems of furnace operation?

[fol. 11835] A. Yes, they do. In 1930 I had charge of the survey on the pull on furnaces, and we found at that time we had an under-pull of an average of around 30%. Today, I would say most all of our furnaces over-pull.

Q. Well, during the period have you increased the efficiency in the sense of more tons of glass per square foot of melting area?

A. Yes, in the days of the old Owens Bottle Machine it was sort of a standardized program to pull a ton per 17 square feet, and today we have some instances where we get down as low as a ton per 6 square feet.

Q. It has been necessary to rehabilitate the plants due to the increased efficiency of the suction machines?

A. That is right.

Q. And you have also speeded up your feeders in that period?

A. Oh, yes.

By Mr. Wood: That is all.

Cross-examination.

By Mr. Isseks:

Q. I show you a copy of Exhibit O-5958, which shows today, at the end of 1940, you have four type AN machines, 30 type AQ, 50 type AR, one AT, one AV, and 12 AO machines. Are the 12 AO machines covered by any patents?

A. Yes, there are patents directed to the specific structure used in the AO machines.

Q. But otherwise, is the AO machine nothing but a rebuilt machine of the type of either the AN, the type AR, the type AQ, except for the specific patents?

A. Broadly speaking, the AO is built around the same principle as that used in the AN, AQ and AR.

[fol. 11836] Mr. Isseks: There will be no further questions, Your Honor, but I would like to have counsel produce a list similar to the list O-6096, to cover the AO machine. I am sure it was an inadvertence, for they have the other machines covered.

Mr. Wood: That was a much later machine, to which patents are especially directed. We are perfectly willing to put it in. I would like to explain why it was omitted.

Mr. Isseks: Accidental?

Mr. Wood: No, it wasn't accidental. The point of putting in the list was to show the basic Owens machines and their numbers which are public property at this time and have been for many years last past. The AO machine was designed in the '30s, so that the same doesn't apply to it.

Mr. Isseks: That is contrary to what the witness said. The witness indicated the basic patents were the same used in the AN, AQ, and AR, I think he said as well as those in the AO.

The Witness: The basic patents.

Mr. Wood: That is true, but this is a much later machine.

Mr. Isseks: Let's see the list. You don't mind giving me the list?

Mr. Wood: No, not at all.

Mr. Isseks: Thank you very much.

No further questions.

[fol.11837] Mr. Wood: I would like to offer in evidence the patents which Owens procured in the purchase of assets of the O'Neill Company on May 6, 1933.

Mr. Isseks: If it is not offered on any issue of prior art, validity or infringement, we have no objection.

Mr. Wood: It is put in to show what we bought.

Mr. Isseks: No objection whatsoever.

The Court: It may be admitted.

[fol. 11838] Mr. Wood: I will give the list of these patents, Exhibit #6097, and the group of patents, 6098, are the patents purchased by the Owens-Illinois Glass Company from O'Neill on May 6, 1933.

The Court: They may both be admitted.

Mr. Wood: That is all, Mr. Soubier.

The Court: I understand Colonel Brown is to take the stand?

Mr. Wall: Yes, Your Honor.

Mr. Middleton: This is something I would like to have done before we get too far away from it: I find one exhibit was not received of record. It is unfinished memorandum of Mr. Carter. It is Exhibit O-5999. It was read by someone but the transcript doesn't show it was admitted.

• • • • • • •

The Court: I have it marked "Admitted". It may be admitted, for the record. You may proceed with the further questioning of Mr. Brown.

[fol. 11839] Thereupon the defendant, Hartford-Empire Company, further to maintain the issues upon their part, recalled the witness, Robson D. Brown, who, having previously been sworn, testified further as follows:

Direct examination,

By Mr. Wall:

Mr. Wall: Practically all of this is in response to requests by the government. I also have some miscellaneous matters to take care of as we go along.

First I will call attention to the exhibit H-5915-A, which was offered at page 9585, does not seem to be admitted. That is the volume of patents by Hartford inventors applicable to the single feeder.

The Court: I have it marked admitted.

Mr. Wall: It is my error, then. I thought it wasn't.

Mr. Wall: Exhibit 5915-B probably was not admitted because I didn't have the book physically present in the court room at the time.

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Mr. Wood: That was a much later machine, to which patents are especially directed. We are perfectly willing to put it in. I would like to explain why it was omitted.

[fol. 11840] The Court: It may be admitted.

Mr. Wall: Exhibit 1888 was offered by the government at page 7289, and I don't find that it was admitted. It was a list of Hartford stream feeding patents.

Mr. Wall: I would like to offer as Exhibit 1888-A, if there is no objection to the number, the patents which are referred to in 1888.

The Court: It may be admitted, Exhibit 1888-A.

Mr. Wall: The next exhibit which I would like to offer, I will ask to have marked as H-5918-B, and this consists of the patents acquired by Hartford which relate to the present Hartford lehrs. The list of patents, both acquired and of our own inventors, was 5918, and the patents just issued to Hartford inventors was 5918-A and this completes that exhibit.

The Court: It may be admitted.

[fol. 11841] Mr. Isseks: Your Honor, I will not renew my statement, but I assume all these patents are being admitted by Your Honor in accordance with your previous ruling?

The Court: That is correct.

Mr. Wall: That situation being covered in the past in the record, I see no reason to renew the statement of my position.

Q. Exhibit H-5356 was entitled "Hartford suction patents". That was offered when Mr. Pieler was on the stand. Since that time, Mr. Brown, has any examination been made to see whether that exhibit was complete and correct?

A. Yes.

Q. What was found?

A. I found that some patents had been omitted from it, and I made a new schedule showing the additional patents.

Q. What was the nature of the omissions that were found; was it one class of patents?

A. They were patents that should be regarded as suction patents.

Mr. Isseks: I make no objection.

Mr. Wall: I just want to identify what that additional class is.

The Witness: Not an additional class. Just other members of the same class.

Mr. Isseks: Just substitute it.

Mr. Wall: Mark this as 5356, which will be substituted for the exhibit now in.

Mr. Isseks: No objection.

[fol. 11842] The Court: It may be done.

Q. The patents themselves which are referred to in Exhibit 5356 have been bound into two bundles here, entitled "Volume 1, Hartford Suction Patents 1,032,598 to 1,893,060, inc.", and "Volume 2, Hartford Suction Patents Nos. 1,893,062 to 2,199,140, inclusive", which I would like to offer as 5356-A and -B respectively.

The Court: They may be admitted.

Mr. Wall. I will now produce for the government a compilation headed, on the front page, "Patent Applications Filed by Hartford-Empire Company in 1927, 1928 and 1929", which contains some explanatory notes and a list of each application filed during those years, the filing date, the name of inventor, the patent number if a patent issued upon the application, the general group by subject-matter in which the patent or application falls, and a short description of the subject-matter of which, or of some features to which the application relates. This has been prepared by

Mr. Peiler and is submitted in accordance with a request which was made while he was on the stand, for a compilation of patents issued upon applications filed in those years.

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[fol. 11843] The Court: 6099 may be admitted.

Mr. Wall: I offer next an exhibit which has been identified and as to which testimony has been taken, H-5360, plunger impulse feeders and air impulse feeders, the diagram of them in connection with the testimony of Messrs. Peiler and Hunter, and the additional offer which was stipulated into evidence the other day. This is offered for all purposes. I assume, possibly, it falls within Your Honor's ruling.

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[fol. 11844] The Court: I will admit it with the limitations.

Mr. Isseks: You don't mind if I make an offer at this time?

Mr. Wall: No.

Mr. Isseks: We would like to offer Exhibit 1884, which is a similar diagrammatic sketch of three types described by witness Peiler. At the time we said we were not going to offer our exhibit unless they offered theirs. In view of the fact they offered theirs and Your Honor has admitted it, we offer ours for the same purpose.

The Court: 1884 may be admitted.

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The Court: It may be admitted.

Mr. Wall: I have a few corrections which I would prefer to take up now, rather than later, if agreeable.

The Court: Very well.

Q. Mr. Brown, will you refer to your copy of the record, page 9702? Do you have your copy with you?

A. No. I don't have that volume here.

Mr. Isseks: I will show him a copy.

[fol. 11845] Mr. Wall: Yes. I have my own marks on mine.

Mr. Isseks: Do you mind if I look over your shoulder?

The Witness: No.

Q. I will call your attention to a question in the second, third and fourth lines from the bottom, in which there may be an error in the question:

"because those patents"——

referring to the Nivison-Weiskopf patents——

"weren't made a defense by the Nivison-Weiskopf people in the suit, because they weren't in issue at the time of the suit."

Your answer:

"No. At least the first two on the conical cam with the charge"——

should be "large"?

A. It should be "large".

Q. "large end uppermost were in use and we saw that. I don't think they were brought into the suit particularly."

Now did you understand the question to ask from you an answer as to whether the patents were not made a defense in the suit because they had not been issued at that time?

A. I did not get the idea that the question included the idea of the patents being made a defense by the Nivison-Weiskopf people because the patents a defendant may own are hardly matters of defense, but what I was saying was, two of the patents were issued at the time but they were [fol. 11846] not referred to particularly in the suit.

Q. The first word on page 9703 should be "large" instead of "charge"?

A. Yes.

Q. Now turn to page 9705, please, the ninth and tenth lines from the bottom. You were being asked about a suit in England on a patent owned by the British Hartford-Fairmont. Is that the name of the corporation in England?

A. The name is British Hartford-Fairmont Syndicate.

Q. This question was asked.

"And the outcome of the suit was against Hartford—— I mean Hartford representatives?"

And your answer:

"Oh, yes."

And then you go on to explain further what you mean. Now, did you mean to say at that point the British Hart-

ford-Fairmont Syndicate was a representative of your company?

A. No, because it wasn't so.

Q. What was, and is, the relation between the two companies?

A. The British Hartford-Fairmont Syndicate was organized around about 1920 or so by some glass manufacturers of England, for the purpose of acquiring the British rights in some of the Hartford-Fairmont Company's inventions. Even since that time it has continued to be a customer of the Hartford Company, purchasing from time to time rights on matters that the Hartford Company has developed. But there is no relation between the two concerns other than that.

Q. And, specifically, was, or is, that English company at any time a representative of your company?

[fol. 11847] A. No, except that on one or two occasions, I think, they represented us in selling rights to foreign concerns.

Q. As an agent?

A. As a broker or agent, yes.

[fol. 11848] Q. Please turn to Page 9708, Line 6, Lines 5 and 6. There is some error in the sentence in reply to a question as to the discussion of favored nation clause with Brockway. You say, "You make the same mistake that Mr. Saperston seems to have made, having two things in mind, without getting them together." Was that a correct answer?

A. There was something the matter there. The idea I intended to convey was having two things in mind and getting them mixed together.

Q. Now, at the bottom of the same page there is a statement by you in response to the question relating to back payments and royalties as applied to the Brockway situation. You say, "That is what I have been telling you. They wanted a covenant in the license or in a letter that they would be placed in the same position about royalties, and here they want back payments as to every other licensee, and they were told that that was a matter of policy." Is that the answer as you remember it?

A. No. There is an omission here, I think. What I said, or should have said, and I believe I did say, was "Here they include back payments also, as every other licensee,

and they were told that while that was so as a matter of policy we would not put it in the contract."

Q. Is that correct as to the back payments—that the terms would be the same as for every other licensee?

A. No. That is true, the question of back payments came in with their letter, and the question of most favored treatment in regard to back payments was not particularly discussed as being similar to others. What I said and what [fol. 11849] the fact was, the discussion was about putting them in the same position as to royalty payments, and they were told that, with the exceptions that I have stated, the royalty rates to them would be the same as the royalty rates to others for the same kind of machinery.

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[fol. 11850] Q. Turn to Page 9723. You were asked this question, "You were asked some questions about the possibility of settling the interferences by series of non-exclusive licenses. Have you thought out and can you answer the question of how the claims would be settled and the interference disposed of properly, if that were done?" And the question should be amended, "Have you thought out and can you answer the question of how the conflicts or questions as to the claims would be settled and the interferences disposed of properly if that were done?" Your answer is, "That had not occurred to me in connection with the question. Of course, that is a different question and would have to be settled somehow." Would you amplify that to say what would have to be settled somehow?

A. The question of which claims in an interference properly belong to which inventor. If you are in a contest in the Patent Office and if the parties decide they will settle and exchange licenses, the next question is, license under what? The interferences have to be settled somehow, either by somebody conceding priority to the other, or by taking some other action, so that the Patent Office can end the interference and give the claims to the proper persons.

Q. In the next question I would like to have a correction noted, "Would it still have to be settled by exchange of licenses and agreement, or how?" It should read, "Would they have to be settled by exchange of information and agreement as to where the claims should go? I mention [fol. 11851] that because in this particular instance I thought it might cause us trouble in agreeing later.

On Page 9480, Mr. Brown, you were asked whether T. & R. air control is used in Hartford machinery, and your answer at that time was that you did not know. Have you made any inquiry as to that?

A. Yes, I have.

Mr. Wall: I might say this is offered as a statement of the result of investigation and inquiry. Mr. Brown has no personal knowledge of it, but I thought we would like to straighten it out at this time.

Mr. Isseks: That is alright. Did I ask the question? If I asked it—no, I didn't ask it, but I don't object.

A. I found that the Tucker & Reeves air control has been used in the Hartford feeders where the parts are moved by means of compressed air.

Mr. Isseks: I didn't ask it, but I have no objection anyway.

Q. Now, there is one other change in text I want to call attention to. On Page 9542, Line 8,—this, again, you were being asked about Brockway and Hazel-Atlas. The sentence now reads this way, "He added a proviso that if Hazel became licensed under the most favored nation clause it would also be given to Brockway." That is Lines 7 to 9. Now, what is the correct answer there?

A. It should be. "He added a proviso that if Hartford ever gave to any new licensee a most favored nation clause [fol. 11852] it would also be given to Brockway."

Q. On Page 9717 the question was asked as to whether in the Lamb suit any notice was given or any statement made that the Soubier patent had been transferred from Owens to your Company. Do you remember substantially that question?

A. Yes, I do.

Q. The question exactly was, "Was the statement made by anybody that Owens had transferred the Soubier patent?" Your answer was, "I would not know that without looking at the record." Have you looked up the record?

A. Yes, I have.

Q. What is the answer?

A. There are two matters there showing that the patent was transferred from Owens to Hartford. The first is a copy of the patent which appears at the beginning of Volume 5 of the Appeal records, and that copy of the pat-

ent shows on its face that the patent was issued to the Owens Bottle Company. On Page 15 of the same volume the amended bill of complaint contains a paragraph which recites the assignment from the Owens Bottle Company to the Hartford-Empire Company.

Q. There was a question as to Nagle Patent No. 1,803,032, the question being whether it was a patent acquired from an outside inventor or one which came from a Hartford inventor? That is referred to in the transcript at Pages 9601 and 9655. Have you checked that question?

A. Yes, I have. The stipulation is wrong in listing that [fol. 11853] patent as an acquired patent. Nagle was a Hartford inventor at the time he made this invention.

Q. Then at some other time he was out of your employ?

A. Yes. He appears in three places,—once as a seller of a patent to us. Another time as an employee of a licensee who made an invention transferred to us; and the third time he was an employee of ours.

Q. When you refer to the stipulation the record should show it is Exhibit 973?

A. Yes, Schedule 1.

Q. By the way, have you a list of other corrections for that particular exhibit?

A. Yes, I have. The work I have recently done made it necessary to check that exhibit very carefully, and there are a few errors in the listing of patents and particularly in designation of the patents as acquired. Some of them were left off.

Mr. Wall: Suppose we have this marked as 973-A, and have it attached to the exhibit?

Mr. Isseks: No objection. The exhibit is rather long. Suppose we put it right in back of the exhibit?

The Court: 973-A?

Mr. Isseks: Yes. Apparently there has been a mistake and we have no objection to correcting any mistakes.

Mr. Wall: As a matter of fact, I think this shows a few additional acquisitions.

The Court: 973-A will be admitted.

[fol. 11854] Mr. Isseks: Thank you.

Q. At the time you were on the stand before, Mr. Brown, you were unable to give in full a statement as to the pat-

ents which were sued upon in the various suits which are referred to in Exhibit 973. Have you tabulated them in full now?

A. Yes. While I was about it I tabulated the patents in all the suits, including the ones I had already noted on the record.

Mr. Isseks: No objection.

Mr. Wall: I think the quickest way is to have it marked as an exhibit and offer it. I offer it as Exhibit H-6100.

Mr. Isseks: No objection to it.

The Court: You are marking this H-6100?

Mr. Wall: Yes, Your Honor.

The Court: It may be admitted.

Mr. Middleton: This Exhibit H-6100, what is it called?

The Court: Patents in infringement suits listed in Exhibit 973.

Mr. Wall: I now ask to have marked a statement entitled, "Expired patents formerly owned by Hartford-Empire Company," which shows classified lists of expired Hartford-Empire patents listed in Exhibit 973, pursuant to request by government counsel at transcript Page 9674.

Mr. Isseks: No objection. I would like to ask one question, whether this includes the patents that expired since the date of the stipulation?

[fol. 11855] The Witness: No, it doesn't. Those patents are, however, described in another paper.

Mr. Isseks: Thank you. That is good enough. No objection to this.

The Court: It may be admitted.

[fol. 11856] Mr. Wall: There is a reference in this exhibit, Exhibit 6101, to a man named Mulholland, and he appears under the list of acquired patents.

Q. What I want to get at is, you have an inventor or engineer named Mulholland in your employ, don't you?

A. Yes, we do.

Q. And on page 6, there is a Mulholland shown under the heading "Acquired Patents" relating to lehrs and annealing. Is that the same Mulholland?

A. That is the same Mulholland.

Q. Tell us about him; how long has he been with you?

A. He came to Hartford before my time. From the papers, I know he came from Pittsburgh, where he had been employed by the firm of Heyl & Patterson, and that Heyl &

Patterson had sold to Hartford some patents relating to ware-handling devices, and a lehr or two, and Mr. Mulholland came along with the patents, Heyl & Patterson was going out of that sort of business at that time.

Q. Was this acquired patent shown on page 6 which was acquired, a patent obtained before he was employed by you?

A. Yes, and assigned to Heyl & Patterson, the patent being assigned by Heyl & Patterson to Hartford.

Q. The name Chamberlin appears frequently, for example on page 5 of the exhibit. Is that the Chamberlin who was with Empire Machine Company?

A. Yes; these bulb machine patents of Chamberlin and others are those that came to the Hartford Company from the Empire Machine Company.

Q. In the course of the merger?

A. Yes.

[fol. 11857] Q. How about the Hanford?

A. The same; his patents are in the same class.

Q. Now, how about the inventor, Dorsey?

A. That is Mr. V. M. Dorsey, who has testified here. He committed a few inventions in his youth.

Mr. Wall: We have next to offer, a list of Hartford patents issued since the stipulation of August 20, 1940, which is Exhibit 973, and up to and including December 31, 1941.

Mr. Isseks: We make no objection to this list.

Mr. Middleton: Between what dates?

Mr. Wall: Between August 20, 1940, which is the date of Exhibit 973, and December 31, 1941. That will be Exhibit H-6102.

Mr. Isseks: No objection.

The Court: It may be admitted.

Mr. Isseks: I want to ask the witness one question first. Have any patents issued to Hartford since December 31, 1941, as far as you know?

The Witness: I couldn't tell you.

Mr. Isseks: I see. Forget about it.

Q. Does this Exhibit H-6102 of patents issued during the recent period which I have mentioned, show any acquisitions during that period?

A. No. It shows one patent to Kucera, which is an acquired patent, but that was assigned as a result of his contract of 1932 or '33.

The Court: H-6102 is admitted.

[fol. 11858] Q. That assignment was 'way back of August, 1940, wasn't it?

A. Oh, yes. Yes, the application was filed sometime earlier, and the assignment was executed then, as far as I know.

Mr. Wall: I have next, Your Honor, to have marked as H-6103, a compilation which is marked on the flyleaf, "Hartford's '503' Patents" unexpired as of August 20, 1940, and relating to feeding, forming and annealing glassware but not applying to the present Hartford single feeder, the present Hartford I. S. Machine, the present Hartford #28 machine or the present Hartford lehrs.

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Now, this has some titles which I would like to have briefly explained.

Q. Mr. Brown, take the list of patents relating to feeding, excluding suction, which do not apply to present Hartford [fol. 11859] single feeders, that would be page 3 not counting the flyleaf,—the first item is air bell feeders. Now, does that mean the pneumatic feeders which we have been talking about here?

A. Yes, pneumatic feeders in which there is a tubular thing called an "air bell" or "vacuum tube" that extends down into the glass and within which variations of air pressure are produced that control the discharge.

Q. How about cup feeders?

A. Those are devices in which glass comes out of a hole in the forehearth, and there is some sort of cup underneath to catch the leading end of the glass or some portion of the glass, and either collect it or influence its shape.

Q. That would not be a suceion cup feeder, then would it?

A. No.

Q. Now, "Deliveries, Chutes, Troughs, Deflectors and Funnels", that is self-explanatory, but is there some overlapping as to where those patents may appear?

A. Yes. When you come to the question of patent plates you will find that these delivery things turn up in three places. There are plates that apply to the troughs themselves, and they are listed also, sometimes, on the feeder

patent plates, and on the forming machine patent plates, because they cooperate with both and it is a matter of judgment where they should go; so we put them in all three places.

Q. Now going down next to the heading "Heating Below Feeder Outlet"; what is that?

A. Those few patents have to do with the application of heat in one way or another under the outlet. Particu- [fol. 11860] larly you will find there the Tucker & Reeves flaming-cup patents.

Q. That has to do with such things as you mentioned, the flaming cup and other means of applying heat below the orifice, as the class shows?

A. That is so, yes. Then there are a couple of other things. There is the matter of the annular burner around the outlet that we spoke of a while ago, in cooperation with a cup which has no flame in it. And then the last one is a patent on a rotating burner, which blows the glass back and also turns around as it does so.

Q. Also does what?

A. Turns around in a circle as it is applied to the glass.

Q. The marble feeders, what are they?

A. Those are feeders for making little mold charges that are made into glass marbles, toy marbles, usually, or marbles for lithographers' use.

Q. Something rather different from the ordinary run of feeder operation?

A. Yes.

Q. Paddle bowl feeder?

A. That was a feeder that came along intermediate between the paddle feeder and the paddle needle feeder. The first step was to put a bowl in front of the spout of the paddle feeder. The bowl had a hole in its bottom, but the hole was not controlled by a plunger or any other means. That was in use for a short time and was still further improved by adding the plunger.

Q. How does it come you have a patent of that kind now [fol. 11861] in existence?

A. Well, the disclosure of that paddle bowl feeder was included in the application for the paddle needle feeder, and later on there was a divisional application filed to separate this paddle bowl matter particularly and specifically.

Q. How about the paddle needle feeder patent: the same question as to that? How does it come there is still a patent of that kind unexpired?

A. Yes, that went along through the Patent Office from 1919 to 1928 along with the plunger feeder application, which resulted in the stuffing patent; the two applications were filed on the same day and patented on the same day.

Q. "Plunger and moving bowl feeders" means what?

A. Feeders in which there is a plunger operated with a bowl containing glass and the bowl may be moved up and down.

Q. Instead of the plunger moving?

A. Or both.

Q. Or both moving?

A. Yes. Or the bowl may rotate.

Q. What was that, an experiment along that line, this patent here? That is page 13, Peiler is the inventor of the Hartford patent, Morton is the inventor named in the acquired patents.

A. Yes, as far as Peiler is concerned that was just an experimental idea.

Q. Now, what do you include within "plunger mounting and actuation"?

A. A good many details in the way the plunger is held in its holder and moved up and down. That has been the sub-
[fol. 11862] ject of a good deal of machine designing.

Q. How about the means, that is, whether it should be cam-operated or air-operated?

A. They both have been employed and both have been the subject of detailed development.

Q. What is the "tube and blow-back" feeder, which appears on the next page,—that is, the heading appears on the next page?

A. That was on an idea of Mr. Peiler's where there was a stationary tube above the outlet and a blow-back cup below, which did not get into use.

Q. "Tube and plunger feeders", what is meant by that heading?

A. There are a good many patents in that class, and they started with the idea that you have a plunger going up and down to control the outflow, and you have a tube

surrounding the plunger to control the amount of glass that comes to the outlet. The tube acts as a gate surrounding the outlet. From that point there has been quite a little development. Mr. Soubier contributed the idea of rotating the tube, and Mr. Peiler had several ideas such as modifying the shape of the tube by cutting part of it away to let the glass in more on one side than the other, for example. That is the sort of thing that I put into this class of tube and plunger feeders.

Q. Has that been the subject of a great deal of detailed improvement and patenting?

A. Yes. And there is another thing—the way in which the tube is mounted, because that is a problem on account [fols. 11863-11864] of the heat.

Q. How about "vacuum below outlet"?

A. Those are some ideas for assisting the outflow of glass from the feeder orifice by applying vacuum below the outlet. One I have in mind, for example, of Mr. Howard, was an inclosure we called the "vacuum box", that had vacuum inside to hasten the outflow. That is different from the forced feed, in which suction is used below the outlet, but for the purpose of charging the mold.

Q. Is this merely to spread the glass out within the mold?

A. This is merely to get the glass out of the hole faster. The other is to get it into the mold.

Q. The subject of "weight regulation", what is that about?

A. There has been some little activity in arranging feeders and forming machines so that if the feeder goes off in weight,—that is, if the mold charges become improper in weight,—there will be an automatic way to get them back to the right weight again. That can be done in various ways, and some of them are shown here.

Q. Will you turn to page 4? There seems to be an omission, typographical, perhaps, under "Acquired Patents", last patent, last item on the page. You have patent 1,999,444 to Curtiss, bat preventer, with pivotal something or other?

A. I think that was "pivotal mounting". I will check that and correct it.

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[fol. 11865] Mr. Wall: I am not sure whether Exhibit 6103 was admitted.

The Court: 6103 was not admitted. It may be admitted.

Robson D. Brown thereupon resumed the stand.

Q. I had asked you before recess to look at page 4 of the section of that exhibit which refers to unexpired patents on feeding, excluding suction. There seemed to be an error. What did you find?

A. The word "mounting" is left off from that brief description. It should be "Bat Preventor Pivotally Mounted".

Q. That is on page 4, the last item referring to the Curtiss Patent 1,999,444.

The next section of Exhibit 6103, formers, and the tabulation bears the heading "Unexpired Hartford Patents on Forming Machines and Methods which do not apply to present Hartford I. S. and No. 28 Machines". There you have a series of headings, most of which I think are intelligible in view of the evidence to date. I would like to ask you about one or two. The heading marked "Cracking-off Devices", what is that?

A. Those are things for breaking off an article, such as a lamp bulb or a tumbler, after it has been made in the paste mold system; it has to be detached from the glass that held it onto the machine.

[fol. 11866] Q. Does that perform somewhat the same function as the so-called "burn-off" patents, or not?

A. In some cases it can, yes. Both have the function of separating the good part from the waste part of the glass.

Q. Towards the bottom of the page is the item, "Ribbon Machines"; what, in general, is the nature of the work on ribbon machines which is indicated by the patents in this exhibit?

A. It occurred to some of the Hartford people that the general practice of depositing a ribbon on a machine to make articles could be adapted to a rotary machine, a machine that goes around and around instead of a straight line machine such as the Corning machine which has been discussed here. They explored that possibility and the four patents that we have here are on ideas developed in the course of that study. It was never done. These represent ideas about how it could be done.

Q. The next section of the same exhibit, 6103, is marked "Unexpired patents on lehrs which do not apply to present Hartford lehrs". There is one heading in that tabulation to which I call your attention, "Drift Control". What is that?

A. A drift control is a control of the movement of the air inside the tunnel of the lehr. You see, a lehr conventionally consists of a long, narrow tunnel, closed all around but open at the ends, because you have to put the bottles in at one end and you have to get them out at the other. Those necessary openings tend to cause a movement of air inside the tunnel, which, unless controlled, would be a bad thing. So these drift controls are devices for [fol. 11867] either preventing or regulating those drafts of air inside the tunnel.

Q. The last section of Exhibit H-6103 is "Unexpired Hartford Patents on Hartford Take-outs, Conveyors, Stackers and Suction Devices." Now, as to suction devices, there is a cross reference to Exhibit H-5356, which we have corrected?

A. Yes, that is so.

Q. I want to ask you about the others—take-outs, conveyors and stackers. Now, your heading of this section of the exhibit does not say that these inventions are not used in your take-outs, conveyors and stackers. What is the fact as to that?

A. As to whether they are actually used or not?

Q. Yes.

A. Some of them are and some of them are not. There is no reference to their use in machinery there. The earliest lists which were prepared were confined to the present single feeder, I. S. and 28 Machines and lehrs, and these are auxiliary devices.

Q. Which you did not separate?

A. Which we did not separate at that time.

Q. So that this section includes both patents used, that is, the inventions of which are used?

A. Yes, sir.

Q. And those which are not used in the present take-outs, conveyors and stackers?

A. Yes, sir, and the information, if you like, as to which are used and which are not will appear from the patent plate lists.

[fol. 11868] Q. There is a revision of Exhibit H-5919 to be presented, is there not, Mr. Brown? H-5919 is the summary of Hartford patents applying to certain Hartford machines, and I believe there was a change in the figures?

A. Yes. After that was prepared we found a few errors, which I think——

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The Court: It may be admitted.

Mr. Wall: I ask to have marked the next exhibit, which will be H-6104, a tabulation of patents under which Hartford is or has been licensed, and which apply or have applied to Hartford feeders, forming machines, and lehrs. The patents marked with a star are expired patents.

Mr. Isseks: No objection, Your Honor.

Q. I call your attention to the fact that this caption really should say,—which have applied or apply to any Hartford forming machines and lehrs?

A. Yes.

Q. Now, Mr. Brown, would that include any equipment which you may have licensed which was not put out by Hartford, such as Bethel feeders and Miller feeders, or any of those?

A. Yes, it would; it does.

[fol 11869] Q. Then this exhibit relates to all equipment which Hartford has licensed, as distinguished from all equipment which Hartford has put out itself to the trade?

A. It applies to both, limited, however, to feeding, forming and annealing equipment.

Q. And this Exhibit H-6104 is limited, is it not, to patents under which Hartford held license rights, and is exclusive of patents owned by Hartford?

A. Yes, that is so.

The Court: It may be admitted.

Mr. Wall: I have had marked as Exhibit H-6105, a tabulation which bears the fly-leaf endorsed "Hartford Patent Plates." I will develop the relation of those to the plates with a few questions. That exhibit is offered, as is also H-6106, which is a summary of the patents which are referred to in 6105.

Q. That is correct, is it not, Mr. Brown?

A. It is a summary of all patents showing the relation between those which have their numbers on the plates and the total number of patents ever owned by Hartford.

Mr. Wall: Each of those is offered.
Mr. Isseks: I think I don't quite understand 6106.

Q. Will you explain that a little more before it is offered?

Mr. Isseks: I have no objection to it, if I can get a little better explanation of it.
Mr. Wall: Suppose we do it now.
[fol. 11870] Mr. Isseks: Yes,—alright.

Q. Take each item please, Mr. Brown.
A. Yes. This 6106 shows that at the time of the stipulation in 1940 Hartford owned 727 patents which then had not expired, but since then and up to the end of last year, 1941, 28 more patents had issued, and that previous to the date of the stipulation, 126 patents had expired. Adding those three items together, we have 881 patents, the total number of patents of the United States that the Hartford Company has ever owned at any time, and the patent plate schedules appear in 6105, showing that 220 separate patents have appeared at one time or another on the Hartford patent plates.

Mr. Isseks: I have no objection, Your Honor. I think I understand it now.

The Witness: The proportion being about 25 per cent, which is somewhat interesting as being rather higher than usual, I would say.

The Court: They both may be admitted—6105 and 6.

Q. Please turn to your copy of 6105, Mr. Brown, the first page after the fly-leaf, which has this paragraph down towards the bottom, "Prior to 1927 the plates carried patent dates instead of numbers, in accordance with the statute then in force. Since the statute was amended in 1927 the plates have carried patent numbers." You mean there the new plates, that is, those made up after—
A. Those made up after, and the additions to the plates [fol. 11871] then extant. In some cases they were modified by adding numbers.
Q. Now, turn, please, to the first page, which is numbered one. It is the page following the index, and bears

the heading, "Hartford Paddle Needle Feeder patent plates." The general form of the sheets throughout this exhibit is the same—generally the same. The first column is "Patent Number." That is obvious, of course. The next column is "Date." What dates are those in the second column from the left?

A. The dates of issue of the patents.

Q. And then the name of the inventor, and then the next column after the name of the inventor is marked on this page "Applied (Dwg. or memo date)." What dates are shown in that column?

A. Those are the nearest ascertainable dates when the respective patents were placed upon the patent plates. The information on that is of two kinds. We have blueprints of the plates, and also sometimes we have memoranda instructing that the numbers be put on or taken off. In making up this schedule, I took the latest of those two dates, if there were two, or whichever was available, as being the date shortly after which the number was physically applied to the plate.

Q. Was what?

A. Was physically applied to the plate.

Q. Well, was the number physically applied to all plates at any one time?

A. Oh, no; that is a continuous process, as I think I explained before, that as new patent numbers appear and as [fol. 11872] patents expire, instructions are given to revise the plates. The plates are revised and turned over to the service department with instructions to replace the plates as the service men call at the various plants.

Q. When and how are the blueprints prepared—do they antedate the new plates, or are they merely a reflection of what has been done?

A. No, they ante-date the new plates. That originates in my department. When a patent which we consider applies to a machine is issued, the man in my department having charge of that orders the manufacturer of plates to supply a new set of plates. They are made of thin brass stock, and when he receives those he turns them over to the service department with the instructions I have mentioned to apply them to the machines. Likewise, as patents expire the new plates—or drawings for the new plates are revised so as to omit the numbers of the expired patents.

Q. With your present patent plate, is there any way to remove numbers except by substituting a new plate?

A. No. The plates we use now being of thin sheet metal, are thrown away, and the new plate substituted.

Q. That is, for any changes?

A. Yes, sir. Formerly the plates were made of cast bronze, which was quite expensive, and we would apply the new numbers by means of punches, and sometimes chisel off the old numbers. But that is no longer done.

[fol. 11873] Q. Now, you have a question mark in the date column at various places. What does that mean?

A. This particular schedule about the paddle needle feeder is less complete than others because a good many of the drawings and memoranda cannot be found as to this particular type of feeder. Therefore I had to either indicate the date of application by a question mark, or in some instances I just stated "before" a given date.

Q. Where that occurs that means only what it says?

A. Yes.

Q. That is as exact information as you have been able to get?

Yes.

Q. In the last column in Page 1, which is headed "Removed," the first item is "Consolidated Plunger Feeder Plate, April 11, 1933." That is, the abbreviations indicate what I have just said?

A. Yes.

Q. Does that mean transferred to the consolidated plate which you referred to the other day?

A. Yes. From that time on the consolidated plate was used for all plunger feeders.

Q. Down further there is an item under the column "Removed to trough plate November 11, 1926." What does that mean?

A. That means that the patent number was then dropped from the paddle needle feeder plate and placed on the trough plate. That is one of the instances indicated this morning where a patent on a delivery trough might be applied to either one.

[fol. 11874] Q. The consolidated plunger feeder patent plate was made up of transfers?

A. Yes. Entirely.

Q. Transfers to it of patents which in your judgment applied to any plunger feeder under license?

A. Yes. The patents came from all the plates that had been applied to plunger feeders. They were all there except the Kucera feeder, and some of the Tucker & Reeves feeders.

Q. Following this exhibit through the various sections in order after the paddle needle and single feeder—by the way, the single feeder plates were not the consolidated plates, were they?

A. No. The single feeder was one of the several plunger feeders, the plates for which we consolidated in '33.

Q. After the single feeder is the Bethel feeder. That represents what,—any others such as Bethel patents, that you believed at the time of these drawings would apply to a plunger feeder?

A. Yes, if there are any Bethel patents on that list. There may not be. It includes patents which were considered to apply to the Bethel feeders at the time when the numbers were applied.

Q. I think I don't find any Bethel patents in that list.

A. That's right. Of course not. The Bethel patents were not acquired until 1934, and the Bethel feeders were licensed in 1927.

Q. By 1934 you were using the consolidated plates?

A. Yes.

Q. There was a separate Howard plate at one time?

[fol. 11875] A. Yes.

Q. Also an Illinois Pacific feeder plate?

A. Yes.

Q. Some of those feeders were under license by your company, were they?

A. Yes. Beginning about 1932 or perhaps 1931.

Q. Now, without making an item by item comparison of these various plates, can you generalize what patents will be found on such plates as Illinois Pacific feeder, Howard, et cetera? Can you distinguish them from single feeders or from the consolidated plates?

A. The consolidated plates contain more numbers, of course. It would also contain numbers applicable to Tucker & Reeves and to Howard, which would not be applicable to the Illinois Pacific feeder. However, there would be a good many common claimed features used in all of them, of course, inherent in all of them. So you will find a very considerable number applicable to all the plunger feeds. You will find others that apply to only some

or perhaps one. The last schedule which we will come to will give that information very quickly as to which particular machines each particular patent applied to.

Q. The next section, Kucera feeder patent plate, the applied date is September 2nd, 1932, representing the date of a blueprint, I assume?

A. Yes.

Q. Then there is an arrow pointing to the next column marked "Pneumatic Feeder Plate." Was there a consolidated pneumatic patent feeder plate also?

[fol. 11876] A. Yes. At the same time we adopted the consolidated plunger feeder plate we adopted a consolidated pneumatic feeder plate. There weren't so many pneumatic feeders as plunger feeders, but the same principles applied. So from 1933 there was no longer any Kucera feeder plate kept up apart from the pneumatic feeder plate.

Q. The Miller feeder patent plates went out of use so far, at least, as new installation is concerned, in April, 1933?

A. Yes, just as the other separate plunger feeder plates did.

Q. The same is true with O'Neill plunger feeder?

A. Yes.

Q. And of the Root patent plates?

A. Yes.

Q. The Root was a plunger feeder, wasn't it?

A. Yes.

Q. Now, T. R. & B. feeder patent plates. There are a number of patents there, and in the consolidated plate I believe there are quite a number of Tucker and Reeves' patents?

A. A good many, yes.

Q. What was the reason for that large number?

A. Well, a good many of the Tucker & Reeves patents cover features that are peculiar to the Tucker & Reeves feeder, and since the Tucker & Reeves feeder is one of the feeders that we consolidated on the plate, the consolidated list contains all the Tucker & Reeves patents that cover those features.

Q. There were different types of Tucker & Reeves?

[fol. 11877] A. Two general types, one with the plunger and one without.

Q. One with the cup, and a plunger feeder?

A. Yes. They are used in various combinations. Some with cup only, some with cup and plunger, and some with plunger only.

Q. And unless these Tucker & Reeves patents appear in 5915, do they have any application to the single feeder?

A. No. The only patents that apply to the present single feeder are listed in 5915.

Q. You were asked in the course of your examination by the government recently whether the Hitchcock patents ever went on to the feeder patent plates. Can you indicate where that appears?

A. Yes. That appears on 1 at the lower right hand corner, Page 1, the date, July 8, 1919, which was the date of a letter, the original of which I have here in case counsel is interested. The date of removal unfortunately I can't tell you, but I know it was on the plate, and I think I can show you a plate that had it on, that is, with the November 21st, 1905, date on.

Q. How about the Brookfield patents as applied to feeder patent plates?

A. No. I find no trace of Brookfield patents ever having been put on any patent plate. That is natural, because the latest Brookfield patent expired shortly after Hartford acquired rights under it.

Q. Was there a Brookfield former patent which was put on a forming machine plate?

[fol. 11878] A. Yes, the Hartford Company long before my time bought a Brookfield patent, which had a claim or two covering some feature of one of the presses, I think, certainly one of the forming machines, and that Brookfield patent got on the patent plate.

Q. There is patent plate data in this exhibit for the milk bottle machine and the narrow-neck machine?

A. Yes. The narrow-neck machine is the one that bears the Brookfield patent number.

Q. That particular narrow-neck machine was the one that originated before you went with the company?

A. Yes.

Q. And gradually went out of use?

A. That is so.

Q. Now, the press and blow patent plate, I assume that is no longer in use?

A. I believe not.

Q. That machine not being now outstanding. The Bock patent, was any Bock patent put on any patent plate?

A. There was no Bock patent on any feeder patent plate, so far as I know. There was one Bock patent that was put on a patent plate for one of the machines.

Q. Referring to forming machines?

A. Yes. I don't spot it this minute.

Q. Alright, let's pass it; wherever it is it will be found. In column "Applied" (drawing or memo date) there are numerous dates shown in the various sections of this exhibit. Does that indicate revisions from time to time of patent plates?

[fol. 11879] A. Yes. Those revisions go on regularly.

Q. At any stated intervals?

A. No. Whenever there are new patents that make it desirable. What they do is to make a drawing of the plate with the numbers thereon, and as new numbers appear or patents expire there are revisions made to that drawing, and after a while when the revisions become numerous new drawings are made, just as machines are kept up by drawings.

Q. In the consolidated plunger feeder patent plates, was there more than one change made in 1939?

A. At least two.

Q. February 6th and August 11th?

A. That sounds right.

Q. Is there any such thing as a 1939 feeder patent plate, or a 1936 feeder patent plate?

A. No. In any given year there will be in the field, on our machines patent plates which differ very much in the details as to the number of patents they carry. That is because of the system of applying them only when the service men call at the plants and sometimes, as we have seen, the old plate is left on quite a while before it is changed.

Q. And the change in the blueprint itself is not a periodic affair, is it, that is, at regular periods?

A. No. Just as patents appear, as I say.

Q. What effect do changes in design of equipment have?

A. It may cause patents to be added to the plates if new features are incorporated in the design covered by the other patents, or it may cause patents to be removed from the [fol. 11880] plate if the new design omits features that were covered by patents applicable to the old design.

Q. Do you have a copy of Exhibit 1990 before you?

A. Photograph of the Howard patent plate, yes.

Q. Yes. You refer to this exhibit as a photograph of a Howard patent plate?

A. Yes.

Q. How do you identify it as such?

A. By the number 160, which is the type number assigned to the Howard feeder, and the No. 15 which is the serial number identifying that particular machine.

Q. The plate at the top of the exhibit appears to be only a name plate, does it not?

A. Yes. That is a separate plate on which we place our name.

Q. Then there are two plates containing patent numbers beneath that, are there?

A. Yes.

Q. What do you find as to the time and place of installation of these two patent plates?

A. In my office records, I have a history of installation of plates on that particular feeder. I have one report of installation of one of the plates, which, however, was the one just preceding the one illustrated in Exhibit 1990.

Q. On which side of the figure, the right or left hand?

A. The right side. The right hand plate, of which I have a report, contained as its last number 2,073,573. You will see that the photograph shows two additional numbers, and I know from my reports when the plates were applied, but I [fol. 11881] do not have actual reports except this one. I have asked for the others to be sent to me, but they haven't arrived.

Q. Your one report is of what date?

A. This report was received on May 26th, 1937.

Q. I wonder if you correctly described that plate as a Howard feeder patent plate. Was the plate at the left affixed before or after you had your consolidated plunger feeder patent plate?

A. If I said Howard patent plate, I should not have. It was a consolidated plunger feeder plate. The feeder was a Howard feeder. The patent plate was a Hartford consolidated patent plate applied to that feeder.

Q. As to the revision, what time?

A. The left hand plate, which has three columns of figures, corresponds to a drawing that was made on March 23rd, 1934, that being the Revision C. That is the third

revision of a drawing made earlier. The additional one-column plate on the right hand side corresponds to a plate which is shown on Revision J of the same drawing dated February 6, 1939.

Q. Now, that revision of 1934 presumably should appear in Exhibit 6105 under the consolidated plunger feeder patent plate?

A. You could figure out the numbers from that, yes. Well, if you had a blueprint which is here for you to see, if you like, you would see the numbers as they stand here, yes, of that drawing on that date.

Q. Is the blueprint here?

A. I have just handed you a print of Revision C of the drawing, and the three columns of figures in the middle correspond to the three columns of figures on the left hand [fol. 11882] plate in the photograph.

Q. Then there are four patents indicated in addition on the right-hand list, are there?

A. Yes. That is as far as it had gone at that time, March 23rd, 1934, the date of revision. Then I also have here a print of Revision J of the same drawing dated February 6, 1939, the right hand column of which corresponds to the right hand column on the photograph, Exhibit 1990. However, by that time Revision J had removed quite a number of the expired patent numbers, which still appear on the plate—on the photograph.

Q. At the top of the left hand column of the left hand plate?

A. Yes, the numbers above 1,382,993. That means that the service man who made the replacement replaced only the right hand plate and did not, as I think he should have done, replace also the left hand plate.

Q. Do you have any further explanation of this Exhibit 6105?

A. I don't think of anything to add to it. I might show you the sort of plate we have in use now compared with the sort of plate we used to use.

Q. The plate that you are now using, can be described without putting an exhibit number on it, can it not?

A. Yes. It is a rectangular plate of thin sheet metal perhaps one and three-quarters by six inches, which is made by stamping, and shows three columns of figures. I think that is nearly the current plate. It is a very recent one anyway. I will compare that with the old style cast bronze

plate, one of which I have here as used on the paddle needle [fol. 11883] feeder. At the top it has five dates cast in, the next to the last of which is the Hitchcock patent date.

Q. November 21, 1905?

A. Yes, and June 20, 1915, is the re-issue date of one of the Hitchcock patents. Then below that is a space left smooth, and on that space additional dates have been added by hand punches.

Q. Do you have before you, Mr. Brown, Exhibit 1992?

Mr. Isseks: We would like to substitute for 1992 that is now in evidence another one that we have made this afternoon. We have a copy of it for Your Honor, copy of it for counsel, and a copy for the witness.

The Court: Alright.

[fol. 11884] Q. Mr. Brown, just two or three questions that are somewhat argumentative, but the argument would be better made by the man who had connection with the patents than by myself.

What do you get, Mr. Brown, by comparing the patents listed in Government's Exhibit 1990 and in Exhibit H-5915?

A. I don't get anything very significant, I think, because the two plates or the two lists mean two different things.

Q. What do they mean, respectively?

A. 5915, it appears, is a list of the patents considered to apply now to the present Hartford single feeder, whereas 1990 was a plate now somewhat out of date. And, apart from that, it is a consolidated patent plate which contains numbers for quite a number of plunger feeders. However, if the idea is to compare on that by itself the number of patents on inventions of Hartford inventors, with the number of patents acquired, that comparison can be made right on the list itself.

Q. That is on 1990, you refer, in saying "on the list itself"?

A. Yes.

Mr. Isseks: You mean on the patent list?

The Witness: Yes.

Q. Now, 1990 contains licensed patents, does it?

A. Yes.

Q. As well as those to which Hartford held title?

A. Yes,—five.

Q. And it includes expired patents?

[fol. 11885] A. Yes.

* * * * * * *

Mr. Wall: I have a few exhibits to put in, and then I have a few more questions of Mr. Brown.

I would like to offer as the next exhibit the settlement agreement of August 2, 1935, between Hartford-Empire Company and Antonio Scalise, doing business as Florida Glass Manufacturing Company.

Mr. Isseks: No objection.

The Court: That is August 2, 1935?

Mr. Wall: Yes, Your Honor.

The Court: H-6107 may be admitted.

Mr. Wall: I desire to offer next, as Exhibit H-6108, the license from Hartford-Empire to Berney-Bond Glass Company of April 26, 1923.

[fol. 11886] Mr. Isseks: No objection.

Mr. Wall: And as Exhibit H-6109, a general agreement, Hartford-Empire Company and Berney-Bond Glass Company of February 15, 1926.

Mr. Isseks: No objection.

The Court: H-6108 and 6109 may be admitted.

Mr. Wall: As H-6110, I will have marked and offer the license and lease from Hartford-Empire Company to Pacific Coast Glass Works of May 24, 1923.

Mr. Isseks: No objection.

The Court: It may be admitted.

Mr. Wall: As Exhibit H-6111 I will have marked and offer general agreement between Hartford-Fairmont Company and the Illinois Glass Company, dated February 21, 1920.

Mr. Isseks: No objection.

The Court: It may be admitted.

Mr. Wall: I next offer a paper which has been marked H-6112, which is a copy of a letter from Mr. F. G. Smith to H. L. Heintzelman, of October 10, 1924.

Mr. Isseks: No objection.

Mr. Wall: And I say, frankly, this witness has no knowledge of it, but I found it in our files.

Mr. Isseks: No objection whatsoever.

The Court: It may be admitted.

Mr. Wall: I will read it.

(Mr. Wall reads said Exhibit H-6112.)

Q. Who was "Bunge" who was referred to in that exhibit?

A. He was a Dutch gentleman who represented Hartford [fol. 11887] in various European negotiations and quite frequently came to the United States in the course of his duties.

* * * * * * *

[fol. 11888] Mr. Wall: We will let you examine it. I have one other thing which I would like to have as an exhibit, and that is the "Summary of Practices of Defendants and Relief Requested", which was handed us on September 8th or 10th, 1940. I do not offer it as constituting any estoppel upon the government in any way. Proper reservations were made by the government in accordance with their understanding of their duties at the time.

I do offer it because it bears, for one reason, upon the state of mind, of defendants, in regard to the changes in the contracts which we made, and it bears upon the statement in our amended answer that since receiving this summary of practices complained of we have made certain changes. It seems to me it should be a part of the record for whatever force it may have.

Mr. Isseks: I don't want to make any extended argument, —of course, we object. The statement, on its face, says that:

"The statement is made at the request of counsel for defendants and is intended for their convenience; it is not a pleading, nor shall it be deemed in any way a limitation of the proof which the government may offer at the trial based on the complaint, voluntary bills of particulars and answers of the defendants; or, for that matter, the relief which the Court may find necessary after all the proof has been taken."

It seems to me if such a document is taken as part of the record, Your Honor would be justified in taking the argu- [fol. 11889] ments of counsel, the statements of proof, trial briefs and various memorandums submitted during the trial.

We object. I don't want to spend any time on it. I don't see how it could be relevant to the issues in this case even for the limited purpose counsel wishes to have it in for.

The Court: May I see what it is?

Mr. Isseks: Your Honor will recall it is something asked of us at the pre-trial conference on June 21, 1940, and which we furnished to counsel for the various defendants.

Mr. Wall: With covering letter dated September 10, 1940.

Mr. Isseks: That is right.

Mr. Wall: If argument had occurred which resulted in our making changes in our contract, it would be something which the record should show, to show why and how the changes were made, the various factors that entered into it. But this statement is a fact and isn't an argument.

The Court: You are offering this for what purpose?

Mr. Wall: The purpose is to show the reasons for the changes which we made and the circumstances leading up to the changes which we made in our contracts in October, 1940. I do not conceive that binds the government in any way.

The Court: Well, it may be admitted for that purpose. What do you mark it, H-6113?

Mr. Wall: Yes, Your Honor, that is correct.

* * * * * * *

[fol. 11890] Direct examination.

By Mr. Wood:

Q. On Exhibit 1990, can you tell us when the top part, or the top plate was put on the machinery?

A. Not offhand. I have that information, and I can get it for you. The general idea of the name plate, showing that the machine was owned and licensed by the Hartford Company, goes away back, but the wording of that was changed from time to time, and I cannot tell you just exactly when that plate went on. I should say quite a bit ahead of the plates containing the numbers.

Q. Well, the only point I wish to make there is that the top part of the plate and the bottom part were separate items applied at different times?

A. Quite separate. The top plate would ordinarily be applied once only when the machine is new, and the lower plates are applied from time to time when the patents issue. I would say—subject to check, I would say that this [fol. 11891] upper plate went on perhaps as early as 1923.

Q. Now, that phraseology on the upper plate, "Owned or controlled by Hartford-Empire Company"——

A. Yes.

Q. Did that apply literally, and if it did, in what sense to some of the patents on the second plate—for instance, the Lott patents?

A. It depends on the time you have in mind. If you consider the time when Hartford had an exclusive license under the Lott patents, then, of course, its control was that of the exclusive licensor having the sole right to sub-license——

Mr. Carlisle: Licensee.

The Witness: Well, either way, because we were the only ones that could license, and we were the exclusive licensee from the owner. However, if you consider the time after 1932 when the license ceased to be exclusive and it became non-exclusive, then Hartford's control over the Lott patents was only such that it had the power to grant licenses under it.

Q. In other words, the legend on the lower plate, "Patented in U. S. A. under one or more of the following patents" was true both before and after 1932, but the legend on the older plate was not true after 1932 in the sense of full control?

A. It was always true, because there are numerous patents there as to which your question does not apply. But confining it to the Lott patents, as you say, that is correct,—our control of the Lott patents after 1932 was only to the extent that we could grant licenses under them.

[fol. 11892] Mr. Wood: That is all.

Cross-examination.

By Mr. Isseks:

Q. Now, this particular plate, that was on in '39, was it not, as far as you know?

A. Yes.

Q. And included the Lott patents?

A. Yes.

Mr. Wall: What was that—was put on, or was on?

The Witness: No, was on. It was put on some time earlier.

Mr. Isseks: 1933.

The Witness: Whenever that memorandum shows.

Q. Whenever the consolidated plate was put on?

The Witness: Well, I have it here.

Q. Alright. What date is that?

A. The large and a small plate were put on in '33, in January.

Q. You mean the plate on the left hand side?

A. Yes, sir.

Q. And at that time—and that includes both Lott patents, does it not?

A. Well, I am wrong about that; it wasn't quite as early. Oh, yes, here it is,—the left hand plate as shown in photograph here, was installed January 6, 1935.

Q. And includes the Lott patents?

A. Yes.

Q. And at that time you only had a non-exclusive license?

A. That is right.

Q. And as a matter of fact, the Lott patents were on [fol. 11893] single feeder plates from 1926 until the consolidated plates, whenever that came into effect, was it not?

A. I think so. I think 1926 was the year, or thereabouts.

Q. Now, ever since you have been with Hartford, every feeder that has gone out has had a plate on, hasn't it, a patent plate?

A. As far as I know, yes.

Q. In other words, when you came there they had a Hartford paddle feeder, and every feeder had a plate on of some kind as it went out?

A. Yes.

Q. And as the single feeder was exploited, each single feeder had a plate as it went out?

A. Yes.

Q. Now, according to Hartford Exhibit 5749, at the end of '23, there were fifteen single feeders, were there not?

A. Yes.

Q. And at the end of '24, a total of 27 single feeders?

A. Yes, sir.

Q. And at the end of '25, there were 85?

A. Yes.

Q. And some time between the end of '25 and the end of '26 there was an increase, so that at the end of '26 there was 149 single feeders?

A. Yes.

Q. Now, during the period from 1923, when the single feeder was first put out, until 1925, there were plates on those single feeders, were there not?

A. So far as I know.

[fol. 11894] Q. But you have no report here—this report here which you have given, Exhibit 6105, does not show any plate on the single feeder until February, 1926?

A. Yes.

Q. What happened to those other feeders that didn't have the plates on?

A. I couldn't tell you. This information is from the records here. They may have that in Hartford.

Q. There were plates on those 85 feeders during those three years?

A. I would think so.

Q. Is it a fair statement to say that that was the old Hartford paddle needle feeder plate?

A. That could have been so, but I don't think it was.

Q. Have you any way of finding out, because the government is very anxious to know what was on those plates during that period of three years, before they made this '26 plate.

A. Well, I know they had name plates on. I am very positive they did. I should suppose, so far as I know, that they had patent plates, too, but I wouldn't be so sure of that, because those things moved slowly.

Q. 85 machines would have had some kind of——

A. Name plates, yes.

Q. And what about patent plates?

A. I am not so sure about that.

Q. Is there any way of finding out, first, whether they were patent plates, and if so, what the numbers were, for that period of almost three years?

A. I doubt if I can right here, but I will make an inquiry [fol. 11895] at Hartford.

* * * * * * *

[fol. 11896] Q. Now, you have similarly with the Howard feeder patent plates—the plates start on or about July 30, 1931. You don't know how far back, however?

A. No, I don't. That is the earliest I can trace it from the papers sent to me.

Q. According to H-5749, the first Howard feeders were 54 in 1924, were they not?

A. Yes.

Q. And there were 50 in 1925?

A. Yes.

Q. And in 1927, 37?

A. Yes.

Q. Now, do you know whether there were plates during that period—by plates I mean patent plates on the Howard feeders?

A. No, I don't.

Q. Now, similarly, in Hartford Exhibit 6105, in connection with Miller, the first plate indicated on the exhibit is June 23, 1928, whereas the Exhibit H-5749 indicates there were some Miller feeders in 1927. You don't know whether there were or not any plates at that time on those Miller feeders?

A. No, and I doubt it; those two dates being so close together.

Q. Now, one further question and I think I am through—in connection with the T. R. & B. T. R. & B. showed a name plate drawing to have been February, 1927, and on H-5749 it shows the first licensing of those feeders in 1926?

A. Yes, sir.

Q. Which must have been the first plate; the one in '27? [fols. 11897-11900] A. I should think so, the dates being that close together.

Q. One further question. I direct your attention to the 160 feeders of Hazel-Atlas licensed in 1932. Do they bear Hartford patent plates?

A. No, they don't.

Mr. Isseks: Thank you. No further questions.

Redirect examination.

By Mr. Wall:

Q. Why didn't they bear Hartford patent plates?

A. Well, they seemed to think it was more trouble than it was worth.

Q. Who thought so?

A. Hazel-Atlas, and the obligation seemed to be on them rather than Hartford, if there was any obligation. You see we didn't own the feeders, and they did, and I remember we

had the question up, and they thought it would be difficult to determine which patents applied to which feeders. Of course, that was wholly a matter of notice to the public, and they already having knowledge of our patents anyway, they didn't think it was worth doing.

* * * * * * *

[fol. 11901] Mr. Wall: If your Honor please, there is one correction should be noted for Exhibit H-5920, which is the list of miscellaneous patents which were offered as not being involved in this suit. Mr. Brown can read the correction into the record.

Mr. Brown: Page 4, omit Patent 2,053,938, Barker, which changes the figure on Page 1 opposite Furnaces from 51 to 50. It changes the total number at the bottom of Page 1 from 117 to 116, and there still are 503 patents which we started out with.

The Court: Does Hartford have something?

Mr. Parham: I have my witness ready, but Mr. Williams would like to offer several exhibits.

The Court: Maybe we better take them by defendants, so we don't confuse them too much.

Thereupon, the Defendant Hartford-Empire Company, further to maintain the issues upon its part, recalled as a witness, VERNON A. DORSEY, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Parham:

Q. Will you state your name, residence and occupation?

A. Vernon A. Dorsey, 126 Chevy Chase Drive, Chevy Chase, Maryland. Lawyer, specializing in patents.

Q. How long have you been a member of the bar and how long have you been practicing before the Patent Office if at all?

A. I was admitted to the Bar in 1922, and was practicing before the Patent Office before that.

[fol. 11902] Are you familiar with the Patent Office practice in connection with the classification of United States patents?

A. I am. For over twenty years that is all I have been doing practically.

Q. Will you state, please, as briefly as you can what the Patent Office maintains in the way of a division for classifying patents?

A. The Patent Office has classes of patents broken down into 312 classes, numbers running as high as 312, one or two missing, and each class is broken up in several sub-classes for easy search. That is to say, covering the features within that class.

Q. Does the Patent Office maintain a corps of expert classifiers to classify the patents?

A. One of the largest divisions of the Patent Office is the classification division.

Q. Do you know, and if so please state the basis on which United States patents are classified by the classification division?

Mr. Isseks: We object unless there is a publication of some kind. He is asking this witness to state what the basis of the classifications are at the Patent Office.

The Court: If he knows, he can tell.

A. Patents are classified according to the subject matter claimed, and cross referenced to the subject matter shown.

Q. Does each patent in the Patent Office have one basic place in which it is classified?

A. Every patent has a class and a sub-class assigned to it.

[fol. 11903] Q. Have you at the request of the Hartford-Empire Company ascertained the classification of the patents listed in Exhibit 973, Section 1? I show you a copy and ask you——

Mr. Isseks: The question is directed to the general classification or to the sub-classification?

Q. The question is, have you ascertained the classification of each of the patents listed in Exhibit 973?

A. I have.

Q. Have you classified them both as to the class and the sub-class?

A. I have noted against each one the class and sub-class according to the official classification.

Q. Have you also considered the patents listed in Defendant's Exhibit H-5920, and classified the patents on that list also?

A. Yes, against each patent in that list I have noted its class and sub-class.

Q. Now, have you also at the request of the Hartford Company prepared a document which shows in comparative columns where the Hartford patents are classified and the number of the patents classified in each sub-class, together with the total number of patents issued in the same sub-classes and the total number of unexpired patents as of August 20th, 1940, in the same sub-class?

A. I have.

Q. I show you a document which I have marked Exhibit H-6114, and which is entitled, "Comparisons of Hartford-Empire Company's Unexpired Patents (as of August 20, 1940) Involved in present suit with all patents issued prior to August 20, 1940, classified in same sub-classes of Patent [fol. 11904] Office classification." I will ask you if that is the document to which you last referred as having been prepared by you?

A. It is. It is the same document. The original of that document.

Q. What can you say as to whether you were accurate in your preparation of this exhibit which we have referred to in your testimony?

A. The work is accurate. It checks back on itself, sir.

Mr. Parham: Your Honor, I offer the exhibit.

Mr. Apsey: We object, Your Honor. We contend that this exhibit is entirely irrelevant and likewise misleading with respect to any of the issues in this case. It is apparently an attempt to compare classifications in the Patent Office which have not been explained to the Court and which do not cover anything so far as we know that is alleged in the complaint. It is likewise an attempt to compare Hartford existing patents with all of the unexpired patents in these classifications issued by the Patent Office. It is a comparison which has no relevancy in this case whatsoever, and as I said before, tends to mislead.

You will notice, for example, that these classifications are indicated only by numbers, and there is nothing to show whether they include the drawings of feeders, formers, stackers and lehrs, as to which alone there is any question raised in this case. We have alleged in the complaint that there is a monopoly of patents covering glass-making machinery. It was intended to cover the machinery alleged in

the complaint. In fact, it so specified in Paragraph 219 of [fol. 11905] the complaint and it was intended to be confined to feeders, formers and lehrs. Those classifications are not shown in the numerical classifications listed in this exhibit. Therefore, that exhibit is meaningless and misleading, and should not be admitted.

The Court: What is the purpose of it?

Mr. Parham: The bill complaint in Paragraph 34 charges Hartford with acquiring and maintaining three separate and distinct monopolies: (a) Patents covering the manufacture and licensing of glass-making machinery. (b) Manufacture and distribution of glass-making machinery. (c.) The manufacture, distribution, and sale of glass products.

We are concerned at the present moment only with (a). At Paragraph 219 we find the following:

"The defendants, Hartford and Owens, now own over 1500 patents on glass-making machinery. They control and dominate virtually all patents on such machinery."

The testimony has shown that Hartford has 610 patents, being the patents shown in Exhibit 973, less 116 patents in Exhibit H-5920, which Mr. Brown has testified were involved in this present litigation and relate to glass-making machinery.

The exhibit which is now offered is to meet this allegation, and this exhibit, I think, accurately shows by the only comparison that can be made that Hartford has not a virtual monopoly or control of patents on glass-making ma- [fol. 11906] chinery in the classes used in the Patent Office itself. To classify the patents the classification division makes up, as the witness said, this classification for the purpose of facilitating the search of its examining corps and for the general public. It is the only classification which is maintained, and what we have done I think is the fair thing to do, and that is to find each place in the classification where Hartford has one or more patents, and then ascertain what other patents are in those classifications.

Now, I have here with me and I can later produce, I have tried to avoid it because I don't care to load the record, I have certified copies of the classification lists which were used by Mr. Dorsey and which were ordered from the Patent Office, and which have data on them with respect to all the other patents. That is, they have a list of all the patents with the names of the particular classifications for

which we used the numbers. Rather than offer them, I would prefer, if Your Honor is not satisfied, that I merely leave them for government counsel to check. I think the exhibit is clearly admissible on the issue the government has made, and if the government wishes to withdraw its claim of monopoly of patents as distinguished from monopoly of machines, then I am content not to put in the testimony.

The Court: Now, you have a summary here. This is the first time I have seen this. Extent of Hartford-Empire patents involved, 610. All patents in sub-classes, 7,829. Now, do you mean by that there are 7,829 patents issued [fol. 11907] covering the same particular things of the Hartford patents?

Mr. Parham: The same class of thing.

The Court: Glass-making machinery?

Mr. Parham: Machinery which is used in glass making.

Mr. Isseks: Your Honor, may I ask the witness a few questions to show the relevancy of this material?

The Court: Yes.

[fol. 11908] Cross-examination.

By Mr. Isseks:

Q. Is there a classification in the Patent Office for feeders?

A. There is a classification—which is not entitled "Feeders", no.

Q. Is there any classification of feeders for making glassware machinery?

A. It is not entitled feeders, broadly.

Q. Is there a classification for formers in connection with automatic machinery?

A. If you mean presses, yes.

Q. There is a classification for presses alone?

A. Yes.

Q. Is there a classification for forming machines?

A. You are covering a lot of land at one time.

Q. I am trying to ask you some questions. Is there a classification for forming machines?

A. Well, in 49 we have "Charging, cutting and molding" which is Class 5, and we have a class of "Molding, Vertical Pipes and Tubes", "Wire Glass", and so forth.

Q. Is that general glass?

A. Class 49 is entitled "Glass".
Q. How many subdivisions?
A. Ninety-three.
Q. Let's read the ninety-three, let's read the whole ninety-three.

Mr. Isseks: Your Honor will see how absurd. They claim there are seven thousand some-odd patents in classification [fol. 11909] 49.
Mr. Parham: That is not an accurate statement. We have not referred to all the classes referred to in class 49.
The Court: How many classes have you referred to?
Mr. Parham: How many numbers?
The Witness: Thirty-six.

Q. Let's read all thirty-six. Give us the names of the thirty-six which you include.
A. If you want to just take "annealing", this lists the sub-classes.
Q. That is only class 49.
A. The first two I skipped because they are in class 13. Class thirteen has sub-classes 6 and 21.
Q. Let's take this first. What is class 13?
A. Furnaces.
Q. Class 13 is "Furnaces". We haven't offered any proof in this case.
A. Electric furnaces, on top of it.

The Court: Among these 7829 patents are there included patents on furnaces?
The Witness: Yes, Your Honor. It shows on the side of the table there are two included in these 610 patents. On the far side it shows the breakdown on the extreme right.

Q. Let's take 13.
A. That is the class of "Electric Furnaces". Now, that relates to glass manufacture, without a doubt.
[fol. 11910] Q. Relates to furnaces?
A. Glass furnaces.
Q. Now, is a furnace a lehr?
A. It wouldn't be a furnace if it was a lehr.
Q. What unexpired patent relates to the furnace that you have here, Hartford patent?
A. There are two unexpired Hartford patents. You can check the numbers off on these.

Q. Are they part of the 117 that Mr. Brown said weren't in the case?

Mr. Parham: No, they are part of the 610 which he left in the case.

The Witness: Most of them have a check-mark on the side. I can identify each and every one.

Q. Tell us which one that is.

A. I will have to have this thing to check. As a matter of fact, I can say there are more of them in there. Here is a series of them listed here. You are interested in them, is that right?

Q. That is right.

Mr. Isseks: While the witness is looking at it I will make it clear we are willing now to disclaim any charge that Hartford and Owens have a monopoly on glass-making machinery in general. Our claim and our proof is they have a monopoly of patents in connection with feeders, formers, lehrs and stackers. We don't claim they have a monopoly on furnaces or machinery on furnaces. We never have, and haven't put any proof in on it; nor have we claimed they have that for glass-making purposes. That will constitute [fol. 11911] an estoppel on the part of the government. We can never in this case claim they have a monopoly on patents on anything other than feeder patents, forming machine patents, stackers and lehrs.

The Witness: There are two patents right there, two Reder patents, whether they are included——

Q. They relate to furnaces?

A. Glass furnaces, is their title.

Q. They relate to furnaces?

A. They relate to glass furnaces. This is a breakdown of furnaces.

Q. Well, if they relate only to furnaces, we will never claim they are part of the monopoly of patents.

A. All right.

Mr. Parham: May I make a statement at that particular time?

Mr. Dorsey is not prepared as to the details of the text of any one of these patents. He has solely worked with the classification. Now, I happen to know these particular patents he is talking about, and they are inventions useful both in forehearth and furnaces.

Mr. Isseks: That is another story. I would like to know whether the Patent Office has made the classification for the witness. The witness said he made the classification.

Mr. Parham: The witness hasn't said he made any classification.

The Court: I want to know what the 610 patents which it is said comprise the 7.79% of the 7829 patents com-
[fol. 11912] prise?

Mr. Isseks: I would like to know what they are, too. Let's ask the witness what the other patents are.

Q. They relate to furnaces in class 6?
A. That is right, "Furnaces"—"glass. Furnaces."
Q. Sub-class 6, 13th subdivision?
A. Yes.
Q. What about classification 13, subdivision 20?
A. That is said to be "Resistance Furnaces".
Q. Take classification 49, under subdivision 1?
A. That is "Combined Machines".

The Court: What is a "Combined machine"?

The Witness: Your Honor, for one, I notice in there, would be the making of glass blocks, glass building blocks would be one.

Mr. Isseks: We have not alleged in this case any patent in connection with machinery relating to glass blocks. We do have the claim, brought out during the case, that Lynch and Owens have a contract in restraint of trade relating to one machine built by Lynch for Owens.

Mr. Middleton: That is not right.

Mr. Isseks: The proof shows it.

Q. What is subdivision 5 of classification 49?
A. "Charging, cutting and molding".
Q. Of glass?
A. Of course it is glass.
Q. 49—subdivision 8?
[fol. 11913] A. 8 is "Pressing and Blowing".
Q. Of glass?
A. The big classification is glass.
Q. 49?— subdivision 9.
A. That is "Pressing and blowing—in separate molds".
Q. Subdivision 14?
A. That is "Miscellaneous". That is a class to catch all the others don't catch.

Q. What is 18?
A. 18 is "Blowing".
Q. What is 20?
A. 20 is "Manipulating Blow Iron".
Q. 29?
A. 29 is "Molding".
Q. 33?
A. 33 is "Rolling".
Q. 35?
A. 35 is "Presses".
Q. 37?
A. 37 is "Traveling Mold".
Q. Did you say 33 was "Rolling"?
A. Yes.
Q. That refers to flat rolling?
A. Not necessarily. There is a patent that is included in there which is a feeder for a continuous glass feeding device for a revolving machine, as distinguished from a straight flow.
Q. It would include patents in the flat glass field?
A. It would include rolling between two rollers as dis- [fol. 11914] tinguished from a bed.
Q. It would include patents, also, in the ophthalmic glass field?
A. No.
Q. They roll ophthalmic glass?
A. They don't finish them off. They may give you the blank but they don't finish it off that way.
Q. Give us subdivision 37?
A. 37 is entitled "Traveling Mold", under Presses".
Q. What is subdivision 38?
A. "Fluid Operated"—presses.
Q. What is subdivision 40?
A. That is "Mold Coolers".
Q. 41?
A. "Mold Supports and Carriers".
Q. 42?
A. "Mold-Separating Devices".
Q. 45?
A. "Annealing".
Q. 46?
A. "Furnaces" for annealing.
Q. 47?

A. "Annealing Furnaces—Conveying." That is where they have some transportation means.

Q. 54?

A. That is "tank furnaces"—heating apparatus for tank furnaces.

Q. 55?

A. "Delivering".

[fol. 11915] Q. 56?

A. "Separate Gathering Pool".

Q. 62?

A. "Gathering and Ladling".

Q. 65?

A. "Molds".

Q. 68?

A. "Molds—Cooling or Heating".

Q. 69?

A. 69 is "Molds—Blowing".

Q. 76?

A. "Cores and Plungers".

Q. 77?

A. "Processes".

Q. 79?

A. "Combined Processes". That is where there are more than one step.

Q. 80?

A. 80 is "Processes—Molding and Blowing".

Q. 89?

A. 89 is "Annealing".

Q. Now go to Classification 74.

Mr. Parham: May I interrupt a moment? On annealing, that has reference to the operation of lehrs, does it not?

The Witness: Oh, yes, that is a temperature proposition.

Q. How many up to this point, before you go to the next one?

A. 3735.

[fol. 11916] Q. In classes 13 and 49 which you have selected?

A. Yes.

Q. Did you go through those 3735 to see how many covered feeders?

A. I took this exhibit——

Q. I mean the patents issued in those classifications, not the ones issued to Hartford but those issued in those classi-

fications—did you take the 3735 and look to find out which ones were on feeders?

A. No, but they must all relate to the same things or they would not be in there, for that is the system of classification.

Q. Did you look at them to see which ones related to feeders?

A. No.

Q. Did you see which ones related to formers?

A. No.

Q. Did you see which ones related to stackers?

A. No. I took this government classification.

Q. You mean in the Patent Office?

A. That is correct.

Q. Did you see which ones related to the lehrs?

A. I didn't examine them for patent numbers, no.

Q. Didn't look at the patents at all?

A. No.

Q. Let's take Classification 74. You have four sub-classifications. What is 74.

A. 74 is entitled "Machine Elements and Mechanisms".

Q. And what is 128?

A. 128 is "Oscillation or Reciprocation to Intermittent [fol. 11917] "Uni-Directional Motion". That is the broad title, and 128 is "Slide Actuators".

Q. And subdivision 240 of Classification 74?

A. 240 is "Gearing—Belt and Sprocket—Guides".

Q. Now in both of those subdivisions, do they include machinery other than glassware?

A. Yes, it is the mechanism which is included here.

Q. Subdivision 241?

Mr. Parham: May I interrupt? It also includes that mechanism if used in a feeder or forming machine.

The Witness: If it was claimed in connection with a feeder or forming machine.

Mr. Parham: And you found a Hartford number in that classification, or one or more.

The Witness: That was in this exhibit, 973.

Q. 241 is what?

A. Sub-class 241 in 74?

Q. Yes, sir.

A. 241 is "Gearing—Belt and Sprocket—Realigning".

Q. And that includes belts and sprockets, you say?

A. That includes—241—there it is. You go up here, "Gearing—Belt and Sprocket—Realigning".

Q. And they have various different kinds of mechanisms, including some that are not in the glass field?

A. I didn't look at it, but if the element was claimed, it would fall in that class, if claimed as gear mechanism.

Q. 568 is in Classification 74?

A. That is under "Elements—Adjustable".

Q. Now, you have a list of 411 patents within those four [fol. 11918] sub-classifications of Classification 74 issued to August 20, 1940. Now, did you go through those 411 to see which ones covered feeders, forming machines, stackers and lehrs?

A. No, I took that Official List right there and by a process of elimination it checked out through the class.

Q. You refer to Exhibit 973 and Exhibit 5920?

A. By working on those two.

Q. Those are patents that have been referred to in this case?

A. That is right.

Q. They relate to feeders, formers, stackers and lehrs?

A. That is right.

Q. How did you find out about the 411?

A. Right here they are, right here.

Q. How did you find out how many were issued in each class?

A. Just by a case of addition and subtraction.

Q. You mean the Patent Office indicates how many in each classification?

A. Yes.

Q. And the class you were working on, 74?

[fol. 11919] A. In 74 I didn't get all of them. I got all of them I was interested in. That is all I got of 74.

Q. You asked the Patent Office how many had been issued before September, 1940?

A. I asked them to give me a certified copy of their classification.

Q. And they gave you a list of 411 patents in those four sub-classifications?

A. That is right.

Q. They didn't tell you in what fields they were, whether they related to trucks or engines or locomotives, or what not?

A. They put out this official classification, which shows what they relate to.

Mr. Isseks: Does Your Honor wish me to go through the rest of it to show how irrelevant it is?

The Court: I think not.

Mr. Isseks: Of course, there are some more classifications like that.

The Court: In what way does counsel claim this has any proving force?

Mr. Parham: Well, Your Honor, I think it directly rebuts the charge of monopoly on all classes of glass machinery, and particularly the charge set forth in 219 that we owned virtually all patents, because Hartford-Empire and Owens owned 1500 patents.

The Court: Clearly, the witness can give no testimony on these 7829 patents.

Mr. Isseks: We will amend that part of the complaint [fol. 11920] to say virtually all patents on feeders, formers, stackers, lehrs and suction machines.

* * * * * * *

The Court: I don't know how it will help the Court to be told by this exhibit that the Hartford Company owns or controls only 7.79% of all patents issued in certain classifications in the Patent Office, totalling 7829 patents when, involved in those classifications, are patents other than those claimed in the Complaint as to which the monopoly exists.

Mr. Parham: But, Your Honor, the Complaint is predicated upon the stipulated patents which appear in Exhibit [fol. 11921] 973, which list was offered by the government as the Hartford patents, which comprised at least the Hartford share of the 1500 patents which they say constitute the virtual monopoly of glass-making machinery.

Now, these patents are classified in the Patent Office in these different classes because of the character of the claims.

* * * * * * *

Redirect examination.

By Mr. Parham:

Q. Mr. Dorsey, in what class would you find feeders, or the bulk of the feeders?

A. If it was claimed as a feeder——

Q. You would find it in 49?

A. You would find it in 49.

Q. And would you find lehrs, if claimed as lehrs, in 49?

A. You may find those in 49 and also in "Conveying". [fol. 11922] There is a bunch of them in class 198.

Q. Where would you find forming machines, if claimed as glass forming machines?

A. You would find those in 49 if claimed as glass forming machines.

Q. And if some movement in glass forming machines was claimed as such movement, it would not necessarily be in class 49?

A. It would not if that was the dominant claim.

Q. Would not. Would it be in that class 74, in "Machine Elements"?

A. In "machine elements" which go to the gears, ratio of cams, and so on.

Mr. Parham: Your Honor, I wish to call your attention to several things about this exhibit as you take it under consideration. You will note the class 49 is the larger portion, and you have sub-totals appearing on the second page for class 49, which is marked "Glass" in the Patent Office, and the witness has also figured the percentages which show the relationship which the Hartford patents in class 49 bear to all the patents in the same sub-class in 49. There are 540 of them, and that is 14.45%. That I wish to call Your Honor's attention to, and perhaps that will strike Your Honor as being nearer the mark.

Mr. Isseks: We would object to that, too.

* * * * * * *

[fols. 11923-11924] Mr. Parham: I would like one thing further, to offer this, for identification only, so Your Honor may have it as one Exhibit H-6115, the batch of certified copies. I don't want them to go, finally, in the record; it is already too big.

* * * * * * *

[fols. 11925] Mr. Isseks: We have charged a monopoly against Hartford and Owens of feeders, formers, stackers, lehrs and suction machines. The proof has gone in on that from the beginning of the case. We have never claimed

[fol. 11926] there has been a monopoly of patents with regard to these other types of machinery. If I were trying to prove it, the only way I would try to prove it is I would put a man on who would go through these 7,825 patents and state whether they cover feeders, formers, lehrs and suction machines. We haven't claimed there is a monopoly on molds, so far as I know.

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[fol. 11927] The Court: Do you have any further witnesses now?

Mr. Parham: We have no further witnesses.

The Court: What was it you had?

Mr. Carlisle: We had the question of the licensees. We were going to call, as to which we understand Your Honor had indicated you were going to abide by your ruling in connection with the offer of Mr. Van Bibber's testimony, and we have a stipulation with the government, and one or two of those offers of proof ready, and the government [fol. 11928] has been kind enough to give us further time to get the rest of them, pursuant to a stipulation.

• • • • • • •

Mr. Isseks: Counsel for Hartford-Empire and the government have agreed as to the form of certain stipulations and offers of proof covering the testimony which Hartford-Empire Company represents would be given by Messrs. Royden A. Blunt and Frank H. Wheaton, if called as witnesses.

Counsel for Hartford-Empire Company have requested [fol. 11929] the government to assent to the granting to Hartford of further time after the conclusion of testimony, within which to file similar stipulations and offers of proof concerning the testimony which would be given by other witnesses, and the schedule showing for each non-defendant licensee of Hartford-Empire, the reported production of glassware by gross of ware from the time when each such licensee became such through the calendar year 1941.

The government is willing that Hartford be granted thirty days from the conclusion of taking of testimony in the present trial,—thirty days from tomorrow,—within which to submit to the Court such stipulations, offers of proof and schedule, provided——

1. Such additional stipulations and offers of proof contain only testimony similar in character and falling in the same categories as that contained in the stipulations and offers of proof already agreed to with respect to Messrs. Blunt and Wheaton;

2. Despite said extension of time, all parties shall be regarded as having rested when Your Honor says there is no further testimony, and defendant Hartford-Empire shall not in any event thereafter attempt to offer oral evidence of any kind falling within the scope and character of that contained in the stipulations and offers of proof already agreed to with respect to Messrs. Blunt and Wheaton, or such schedule, except, with the Court's permission, they may offer testimony upon the question of remedy.

[fol. 11930] The Court: The Court will give no such permission. When this case rests tomorrow so far as each defendant is concerned, the case rests, and if there is going to be any addition to the record, it will be only by agreement between counsel on both sides.

* * * * * * *

[fols. 11931-11932] Mr. Carlisle: This statement has a little more:

"Hartford-Empire Company agrees to the provisions just stated by government's counsel as conditions to the government's consent to the granting of permission to Hartford-Empire Company within thirty days from the conclusion of the taking of testimony to introduce stipulations and offers of proof with respect to the testimony which would be given by certain Hartford licensees, and the schedule of production above referred to."

The Court: Very well.

* * * * * * *

[fol. 11933] The Court: Now, what is it you have to present?

* * * * * * *

We have prepared something which we agreed upon which reads as follows, if Your Honor please:

"In order to shorten the trial of the case at bar the plaintiff, United States, and the defendant, Hartford-Empire

Company, and individual defendants associated therewith, hereby stipulate and agree that"—so-and-so—"would, if called as a witness by the said Hartford-Empire Company, defendant, and individual defendants associated therewith, testify under oath as follows:" And then would follow the stipulation, and then that such testimony shall have the same effect in the determination of the issues in the case at Bar both in this court and in any reviewing court as though the said—the name of the witness—had actually been called as a witness, been duly sworn and testified under oath as above set forth, and that cross examination of the said witness is hereby waived by the plaintiff.

* * * * * * *

[fol. 11934] Mr. Carlisle: I would like to read the two stipulations, Your Honor, and just the one offer of proof—would that be satisfactory?

[fol. 11935] The Court: Proceed.

* * * * * * *

Mr. Carlisle: Now, if Your Honor please, this is the stipulation as to Royden A. Blunt, and I will refrain from reading the preliminary passage, which will apply to each one.

"In order to shorten the trial of the case at bar the plaintiff, United States, and the defendant, Hartford-Empire Company, and individual defendants associated therewith, hereby stipulate and agree that Royden A. Blunt would, if called as a witness by the said Hartford-Empire Company, defendant, and individual defendants associated therewith, testify under oath as follows:

That Royden A. Blunt is Vice-President and General Manager of the Buck Glass Company; that he has been associated with the said Buck Glass Company since August, 1926; that the Buck Glass Company was formed in 1909 succeeding a defunct cooperative organization known as the Nivison Glass Company; that from 1909 until 1911 the Buck Glass Company was entirely hand operated; that from 1911 to 1926 the Buck Glass Company employed semi-automatic forming machines which were fed by hand; that in 1926, because of the competition of automatic production [fol. 11936] the Buck Glass Company obtained a license from the Hartford-Empire Company which installed for it two Hartford-Empire feeders and two Hartford lehrs; that

since 1926 the Buck Glass Company has obtained additional fully automatic equipment from the Hartford-Empire Company under license and lease, and that the present equipment of the Buck Glass Company consists of four Hartford-Empire feeders, four Hartford-Empire I. S. Machines, four Hartford-Empire stackers, four Hartford-Empire lehrs, and one Hartford-Empire decorating lehr.

That in 1910 the Buck Glass Company produced 3,019 tons of salable glassware. In 1925 the Buck Glass Company produced 5,030 tons of salable ware. In 1927, the first year of fully automatic operation, the Buck Glass Company produced 6,970 tons of salable ware representing 73,293 gross of salable ware."

(I am leaving the other production figures for the stipulation which the government has agreed to in one piece of paper, so it won't appear so many times.)

(Continuing reading.)

"That in 1925, the year before the Buck Glass Company obtained a Hartford-Empire Company license, the Buck Glass Company was engaged in producing the following types of ware: milk bottles, sodas, flasks, alcorubs, ovals, gallon jugs, fish globes, and a very small number of thrift jars.

That the figure 52,000 gross per annum of milk bottles contained in the amendment, dated November 5, 1926, (See Exhibit HE-5750, Exhibit 1612) of the above License Agree-
[fol. 11937] ment, was the estimated potential production of milk bottles on two feeders; that the figure of 15,000 gross per annum of shoe polishes, in the amendment of March 26, 1930, to the above License Agreement, was more than ample to satisfy the requirements of the Buck Glass Company; that the figure of 10,000 gross of one-half gallon jars, in the amendment of August 31, 1931 to the above License Agreement, was more than ample to satisfy the requirements of the Buck Glass Company; that the figure of 25,000 gross per annum of food and food condiment were contained in the Amendment of January 30, 1933, to the above License Agreement was more than ample to satisfy the requirements of the Buck Glass Company; that the figure of 70,000 gross per annum of liquor ware, contained in the amendment of June 14, 1933, to the above License Agreement, was more than ample to satisfy the require-

ments of the Buck Glass Company; that notwithstanding the limitations on production set forth in Exhibit 1612, the Buck Glass Company since 1926 has made and sold as many milk bottles as it wanted to or was able to make on its then licensed equipment; that the limitations on the production of milk bottles contained in the above License Agreement and Amendments thereto and the actual production by the Buck Glass Company of milk bottles on Hartford-Empire licensed equipment from 1926 through 1941 were as fol-
[fol. 11938] lows:

Year	Limitation in License	Production
1926	52,000	7,954
1927	52,000	50,907
1928	52,000	56,461
1929	52,000	68,342
1930	52,000	65,381
1931	52,000	74,549
1932	70,000 (10,000 for export, or 3.75% of the total production of the total production of the industry if the total exceeded 1,900,000 gross)	72,472
1933	as above	72,813
1934	as above	76,847
1935	as above	90,543
1936	as above	91,575
1937	as above	112,636
1938	as above	102,057
1939	as above	111,954
1940	all limitations removed 10/8/40. (See Exhibit 5025.)	102,332
1941	None	111,452

That although the Buck Glass Company thus repeatedly exceeded its milk bottle limitation, nevertheless, Hartford-Empire Company never exercised any of its rights of cancellation or forfeiture or otherwise under the license agreement.

That the limitations on the production of liquor ware contained in the above License Agreement and Amendments thereto and the actual production by the Buck Glass Com-

pany of liquor ware on Hartford-Empire licensed equipment from 1933 through 1941 were as follows:

Year	Limitation in License	Production
1933	70,000	1,938
1934	70,000	21,528
1935	70,000	33,214
1936	70,000	39,417
1937	70,000	44,602
1938	70,000	37,078
1939	70,000	26,166
1940	all limitations removed 10/8/40. (See Exhibit.)	33,565
1941	None	31,794

[fol. 11939] That the Hartford-Empire Company has never dictated or suggested or attempted to dictate or suggest the prices at which the Buck Glass Company should sell or has sold or is selling its glassware products, or any of them.

That such testimony shall have the same effect in the determination of the issues in the case at bar both in this Court and in any reviewing court as though the said Royden A. Blunt had actually been called as a witness, been duly sworn, and testified under oath as above set forth, and that cross examination of the said Royden A. Blunt is hereby waived by the plaintiff.

* * * * * * *

[fol. 11940] Mr. Carlisle: Now, in so far as the testimony of Royden A. Blunt is concerned, Hartford-Empire Company and the individual associated defendants have agreed that upon the cross examination of Royden A. Blunt by the plaintiff he would testify that he wrote two documents, which Mr. Apsey has in his hands, said papers having been found in the files of the Hartford-Empire Company in 1938, [fol. 11941] and Hartford-Empire Company and associated individual defendants hereby waive the appearing and examination of said Royden A. Blunt with respect to the two documents attached hereto, and with respect to the contents thereof.

Mr. Apsey: I will just mark them and waive the reading of them, if Your Honor please. The first is a memorandum

from R. A. Blunt to L. M. Buck of February 5, 1930, signed R. A. Blunt, and will be marked Exhibit 2000; the second of these documents, which will be marked Exhibit 2001, is a letter of May 23, 1935, from Royden A. Blunt to Mr. F. Goodwin Smith.

Are they admitted, Your Honor?

The Court: They are admitted.

Mr. Carlisle: I turn now to the offer of proof, if Your Honor please.

"As the Hartford-Empire Company and its associated defendants intended to call certain witnesses who would give testimony such as that which the Court has ruled, in respect to the witness, A. E. Van Bibber, to be irrelevant and immaterial except upon the question of remedy if a finding should be made that Hartford-Empire Company has acquired any of the monopolies charged in the Bill of Complaint; and as the Court has stated to counsel that he will abide by his said ruling if such witnesses were produced, examined and sworn, in respect to the inadmissibility of such testimony and would not permit such testimony to be taken under Rule 43 (c); counsel for Hartford-Empire Company and its associated defendants and counsel for the plaintiff [fol. 11942] in order to shorten the trial of the case and to avoid the necessity for and expense of bringing such witnesses from different parts of the country do hereby stipulate, if the Court approves, as follows:

(a) That defendant, Hartford-Empire Company, and its associated defendants, may make offers of what they expect to prove by the said witnesses respectively, which comes within the scope and character of the evidence which the Court has held to be irrelevant and immaterial in respect to the witness, A. E. Van Bibber, without the necessity of the said witnesses appearing in Court, taking the stand and being sworn;

(b) That the matters covered in the following offer of proof, and those to follow subsequently, fall within the Court's ruling as above set forth."

(Now, I think Your Honor had better, for the record, indicate his approval of the understanding between counsel on that, so that we can take an exception to the ruling on these offers of proof.

The Court: Well, that is the understanding; you may go ahead.

Mr. Carlisle: Alright. We respectfully except to the rulings.)

"Offer of Proof

"The defendant Hartford-Empire Company and individual defendants associated therewith offer to prove through the witness, Royden A. Blunt, that the limitations in the license agreements between the Buck Glass Company and [fol. 11943] Hartford-Empire Company have been no practical handicap to the production and sales of the Buck Glass Company.

That prior to the installatoin of the Hartford-Empire equipment at the Buck Glass Company, Hartford-Empire Company sent engineers to the plant of the Buck Glass Company; that said engineers made an engineering layout and located the glass manufacturing equipment to be used by the Buck Glass Company with respect to its buildings and operating conditions; that during 1932 when the Buck Glass Company substituted a fuel oil burning system for producer gas it had theretofore employed, the Hartford-Empire Company sent combustion engineers to the Buck Glass Company plant; that said engineers gave much helpful advice in transforming the fuel system of the Buck Glass Company; that the Hartford-Empire Company has continuously since 1926 given invaluable aid and service to the Buck Glass Company, including instruction and training of its operators in the operation and maintenance of automatic equipment, in mold design, in annealing technique, in furnace operation, in analyses of manufacturing costs (since 1936), in ware testing, in analyzing and avoiding causes of ware defects, and the Hartford-Empire Company has continually made available to the Buck Glass Company improvements in all phases of operating technique, methods and equipment.

That the principal item of production of the Buck Glass Company has been for many years milk bottles; that since [fol. 11944] 1934 the weight of milk bottles has steadily decreased; that about 1934 the Buck Glass Company commenced producing milk bottles on the Hartford I. S. Machine; that the Hartford-Empire Company loaned the Buck Glass Company two engineers to aid with these experiments; that the Buck Glass Company found that the Hart-

ford-Empire Company I. S. Machines were able to make light weight milk bottles at far greater speeds than the Miller press and blow machines theretofore used by the Buck Glass Company; that by means of the Hartford-Empire Company's equipment, service and research and development, the Buck Glass Company had been enabled to increase its productivity, to increase the quality of its glassware, to lower its production cost and to lower its sales prices which have steadily declined over a period of years and that thereby the Buck Glass Company has been enabled to improve its competitive position with its chief competitors—the Owens-Illinois Glass Company, Thatcher Manufacturing Company, Lamb Glass Company, Universal Glass Products Company and others, and with Owens suction production.

That the salesmen of the competitors of the Buck Glass Company have actively solicited and are actively soliciting the customers of the Buck Glass Company; that the salesmen of the Buck Glass Company have actively solicited of the Buck Glass Company; that the Buck Glass Company and are actively soliciting the customers of the competitors is engaged in active competition in manufacturing and [fol. 11945] selling its glassware products as to three factors, namely, price, quality and service.

That the Buck Glass Company has never maintained any substantial research and development department because the cost thereof would be prohibitive and because the Company has, since 1926, looked to Hartford-Empire Company to continually supply it with the most modern and efficient equipment and means and methods of manufacturing glassware so as to keep the Buck Glass Company on a competitive basis with its principal competitors, some of which are large companies and who do maintain substantial research and development departments.

That the Buck Glass Company has been diligent in the matter of product design best to fulfill the needs of its customers, and has looked to Hartford for advice and help in the production of such new designs.

That three factors are requisite to the success of a glass manufacturing company, namely, an efficient producing unit continually kept up-to-date, adequate capital or resources and a sound management and policy.

That the witness, Royden A. Blunt, would testify to the above facts voluntarily and without either threat or induce-

ment of any person or company; that his reasons for so testifying are that he understands that in the case at bar the Government is seeking the virtual or actual dissolution of the Hartford-Empire Company; that the Buck Glass Company has for fifteen years obtained a great deal of [fol. 11946] invaluable engineering advice and service from the Hartford-Empire Company in addition to glass producing equipment of the most modern type and the Buck Glass Company looks to the Hartford-Empire Company in the future to continue to provide it with modern and efficient improvements in means and methods of automatic production of glassware; that the Buck Glass Company would be put at a competitive disadvantage with its principal competitors if it could not continue to obtain from Hartford-Empire Company improvements in means and methods of manufacturing glassware and engineering advice and service in the production of glassware; that the preservation of the Hartford-Empire Company is highly desirable for the continued existence of the small and medium sized companies in the glass container industry, and particularly to the Buck Glass Company."

Now, if Your Honor please, as to the stipulation as to Mr. Wheaton, although it may be put in the record in full, I think I can leave out parts of it in reading it to Your Honor.

"In order to shorten the trial of the case at bar the plaintiff, United States, and the defendant, Hartford-Empire Company, and individual defendants associated therewith, hereby stipulate and agree that Frank H. Wheaton would, if called as a witness by the said Hartford-Empire Company, defendant, and individual defendants associated therewith, testify under oath as follows:

[fol. 11947] "That Frank H. Wheaton is President of the T. C. Wheaton Company in Millville, New Jersey; that he has been associated with the said T. C. Wheaton Company since September, 1899, and has been President of the Company since 1931; that the Company started in 1888 as a cooperative organization of glass-blowers; that the Company was incorporated in 1901; that the Company's operation was then and remained until 1938 completely hand operation; that the Company has specialized and continues to specialize in the production of perfume and toilet ware,

and laboratory ware which is often made of a special glass composition; that the witness, Mr. Frank H. Wheaton, has since 1901 visited several glass companies, namely; The Corning Glass Works in Corning, New York, Swindell Brothers, Inc., in Baltimore, Maryland, Carr-Lowrey Glass Company in Baltimore, Maryland, Maryland Glass Corporation in Baltimore, Maryland, Whitall-Tatum in Salem, New Jersey, The Gayner Glass Works in Salem, New Jersey, the Lancaster, Ohio and Salem, New Jersey plants of the Hocking Glass Company, now the Anchor-Hocking Glass Company, and that he has observed that all such companies, both before and after the advent of automatic glass producing machinery, specialized in the production of certain limited types of glassware; that such types of glassware were ordinarily classified by the use to which they were put: that the T. C. Wheaton Company has also since its incorporation specialized in the production of [fol. 11948] limited types of glassware; that the reasons for such specialization have been and are:

1. The skill of the hand blower, that is to say, a glass-blower was a skilled worker who specialized in blowing specific types and sizes of bottles and an expert in blowing small ware, such as perfumery and toilet ware, was ordinarily not an expert in blowing larger bottles, such as milk bottles, fruit jars, etc.

2. The excessive cost of molds, that is to say, that the cost of molds is a prominent cost factor in glassware production and a small company cannot afford to stock all sizes, kinds and types of molds and must therefore limit its mold inventory.

3. Different types of bottles require different batches, that is to say, that some bottles are made in green glass, some in blue, some in amber, and some in flint; that certain bottles require a special flint batch; that a small company, particularly a one tank company, cannot afford to change its batch content periodically and therefore ordinarily makes all its glassware with the same kind and color of batch.

4. The different marketing methods and outlets required for different types of glassware, that is to say, certain types of bottles are ordinarily stocked and sold to jobbers, others

are made on order for consumers, such as packers; certain [fol. 11949] types of ware are very seasonal, such as fruit jars and catsup bottles, whereas others must be stocked all year round.

That the T. C. Wheaton Company, because it made special types of bottles largely for old customers and largely in small orders, was not hurt so much by the competition of automatic production until 1937 or 1938 when certain types of bottles which the T. C. Wheaton Company had been making by hand for many years commenced for two reasons to be made by the T. C. Wheaton Company's competitors on automatic equipment; first, that some of the bottles required a screw thread finish which could be better accomplished by automatic production; second, that the Owens-Illinois Glass Company's Chicago Heights Plant in 1938 commenced automatic production of ampoules and serum ware, a line in which the T. C. Wheaton Company had been a pioneer and had become a principal factor, because the volume of the demand for ampoules and serum ware had increased to such a point that it became commercially profitable to make such ware automatically.

That after the T. C. Wheaton Company was refused permission to manufacture on its feeder borosilicate glassware coming within the Corning Glass Works' exclusive field, the T. C. Wheaton Company determined to make up and use in automatic production a borosilicate glass batch which would not come within the Corning Glass Works' exclusive field; that the Hartford-Empire, through its Research and De- [fol. 11950] velopment Department, rendered valuable assistance to the T. C. Wheaton Company in making up such a glass batch so that the T. C. Wheaton Company was enabled to manuacture on its fully automatic equipment serum ware made of a satisfactory borosilicate glass which was capable of competing and did compete in quality with the borosilicate serum ware products of the Corning Glass Works.

That the Hartford-Empire Company has never dictated or suggested, or attempted to dictate or suggest, the prices at which the T. C. Wheaton Company has sold, or should sell, or is selling its glassware products or any of them.

That at present the T. C. Wheaton Company makes between 70 and 80 per cent (by tonnage) and between 60

and 70 per cent (by dollar volume) of its entire production by purely hand operation.

That such testimony shall have the same effect in the determination of the issues in the case at bar, both in this court and in any reviewing court, as though the said Frank H. Wheaton had actually been called as a witness, been duly sworn, and testified under oath as above set forth, and that cross-examination of the said Frank H. Wheaton is hereby waived by the plaintiff."

Mr. Carlisle: Now, if Your Honor please, if I can just be permitted to glance through the offer of proof to see if there is anything I would like to call to Your Honor's attention—I don't believe it is necessary to read that at this [fol. 11951] time, if Your Honor please.

"Offer of Proof—Frank H. Wheaton

"That the T. C. Wheaton Company's hand operation has been and is successful and financially profitable; that the T. C. Wheaton Company's semi-automatic and automatic equipment has been and is successful and financially profitable; that the Company did a total gross business (including hand and semi-automatic production) of $611,745.35 in 1938; that the Company did a total gross business (including hand, semi-automatic and automatic production) of $894,051.84 in 1940; that the limitations in the license agreement and amendment thereto, between T. C. Wheaton Company and Hartford-Empire Company have been no practical handicap to the production and sales of the T. C. Wheaton Company; that the present equipment of the T. C. Wheaton Company includes three Hartford-Empire Single Feeders, 3 Hartford-Empire I. S. Machines, and 4 Hartford-Empire Lehrs; and that in addition, the T. C. Wheaton Company has on order 2 Hartford-Empire Single Feeders, 1 Hartford-Empire I. S. Machine and 1 Hartford Lehr.

That when the T. C. Wheaton Company first obtained a single section I. S. Machine for semi-automatic production of certain types of ware from the Hartford-Empire Company, none of the T. C. Wheaton Company's employees had had any experience in automatic or semi-automatic production; that the Hartford-Empire Company through its Service Department educated the T. C. Wheaton Com- [fol. 11952] pany's operators in the operation of said semi-automatic equipment; that subsequently when the T. C.

Wheaton Company obtained a feeder and a four section I. S. Machine the Hartford-Empire Company through its Service Department instructed T. C. Wheaton Company's operators in the operation of said fully automatic equipment; that at the time the T. C. Wheaton Company elected to install fully automatic equipment it built a small continuous glass tank; that the Hartford-Empire Company through its Service Department rendered extremely valuable assistance to the T. C. Wheaton Company in the design and layout of said tank and the automatic equipment to be operated therewith, including feeder, I. S. Machine and lehr; that the Hartford-Empire Company has at all times upon request of the T. C. Wheaton Company rendered valuable services in ironing out difficulties of automatic production of certain types of glassware, in chemical analyses and tests of glassware, in annealing and furnace problems and in engineering advice and service of all kinds necessary to the successful commercial operation by the T. C. Wheaton Company of its automatic equipment.

That the T. C. Wheaton Company has never had any substantial research and development departments because the cost thereof would be prohibitive and because the Company since 1938 has looked to Hartford-Empire Company to continually supply it with the most modern and efficient equipment and means and methods of manufacturing glassware so as to keep the T. C. Wheaton Company on a competitive [fol. 11953] basis with its principal competitors, some of whom are large Companies and who do maintain substantial research and development departments; that the Hartford-Empire Company's equipment, research and development and service have enabled the T. C. Wheaton Company to increase its productivity, to get better quality glassware, to lower its costs of production and to maintain and improve its competitive position with (a) the Owens-Illinois Glass Company and the Corning Glass Works, (b) Kimble Glass Company, Carr-Lowrey Glass Company and Swindell Brothers, Inc.; and (c) other processes, such as suction and tube drawing.

That the principal competitors of the T. C. Wheaton Company in 1938 were the Owens-Illinois Glass Company and Corning Glass Works; that other competitors of the T. C. Wheaton Company in 1938 were Carr-Lowrey Glass Company and Swindell Brothers, Inc.; that the principal com-

petitors of the T. C. Wheaton Company at present are the Corning Glass Works and the Kimble Glass Company (which has purchased from the Owens-Illinois Glass Company the Chicago Heights Plant); that the other chief competitors of the T. C. Wheaton Company at present continue to be Carr-Lowrey Glass Company and Swindell Brothers, Inc.; that the salesmen of these competitors and of others have actively solicited and continue actively to solicit the customers of the T. C. Wheaton Company and the salesmen of the T. C. Wheaton Company have actively [fol. 11954] and continue actively to solicit the customers of these named competitors and of other competitors; that the T. C. Wheaton Company is in active competition with these named Companies and others as to price, quality and service.

That the witness, Frank H. Wheaton, would testify to the above facts voluntarily and without either threat or inducement from any person or Company; that the reasons he would so testify are that he understands that in the case at bar the government is seeking the dissolution of the Hartford-Empire Company; that T. C. Wheaton Company has obtained in the past much invaluable engineering advice and service from the Hartford-Empire Company and looks to the Hartford-Empire Company in the future to provide the said T. C. Wheaton Company continually with modern and efficient improvements in means and methods of automatically producing glassware; that the T. C. Wheaton Company would be put at a competitive disadvantage as to its automatic production with its principal competitors if it could not continue to obtain from Hartford-Empire Company improvements in means and methods of manufacturing glassware and engineering advice and service in the production of glassware; that the preservation of the Hartford-Empire Company is highly desirable to the continued existence of the small and medium sized companies in the glass container industry and particularly to the T. C. Wheaton Company."

Mr. Apsey: There is another stipulation, Your Honor. [fols. 11955-11958] Mr. Carlisle: Oh, yes,—why not do it now, and then we have got it all cleaned up. This is a separate stipulation, Your Honor, which we have entered into to avoid the necessity of the government calling rebuttal witnesses:

"It is hereby stipulated and agreed by and between plaintiff and Defendant, Hartford-Empire Company, and associated individual defendants, that since October 8, 1940, Knox Glass Bottle Company and associated companies have manufactured on Hartford feeders approximately 110,000 gross of pressed glassware.

(2) McKee Glass Company has manufactured on Hartford feeders approximately 615 gross of vinegar bottles.

(3) Brockway Glass Company, Inc., has manufactured approximately 46,000 of carbonated beverage bottles.

(4) Florida Glass Manufacturing Company has produced or sold on Hartford feeders approximately 30,000 gross of packers' jars with the G. Mason finish.

(5) The Sterling Glass Division of the Warfield Company, has manufactured approximately 424 gross of 16 ounce emulsion bottles."

Mr. Apsey: I should point out, Your Honor, that the purpose of this testimony is to indicate changes that have been made in the permitted ware prior to October 8, 1940, and since the release of restrictions on that date.

The Court: Anything further, Mr. Carlisle?

Mr. Carlisle: Not at this time, Your Honor.

* * * * * * *

[fol. 11959] Mr. Goodrich: Now sometime ago during the examination of Mr. Pease, Mr. Isseks asked him to produce——

Mr. Isseks: Direct Examination.

Mr. Goodrich: Whichever it was—direct and cross; it was in both—asked him to produce som-thing that would show the original letter from the Nola Glass Industry organizing to Hartford. Now, the first matter I can find on that is what might be called a prospectus, which is a copy received by us under date of May 22, 1939, and which I have had marked Exhibit H-6116, and which I now offer, not for the proof of what is in the prospectus at all, but simply for the date and for the letterhead.

The Court: That is a letter of what date?

Mr. Goodrich: There is no date on it, Your Honor. That is, on the letter itself, but there is a stamp dating on it of

May 22, 1939, and it is put out over the signature of G. M. Ahrons to the Nola Glass Industry. It is a prospectus.

The Court: That may be admitted.

Mr. Isseks: Your Honor, I haven't had a chance to see any of these documents, and may I make the request that Your Honor reserve decision until tomorrow morning?

Mr. Goodrich: I have marked as Exhibit H-6117, a letter of August 16, 1939, addressed to Mr. William M. Matthews, over the signature of C. F. Ryan of the Hartford Company, which is the first reply from Hartford to Matthews on this Nola Industry thing. There are no letters previous to this from Hartford to Ahrons.

Mr. Isseks: Your Honor, we don't object to either one [fol. 11960] of those documents.

The Court: They may be admitted,—6116 and 6117.

Mr. Goodrich: Thank you, sir.

The third I produce in compliance with his request, I have marked 6118, which is a letter of August 28, 1939, addressed to Mr. Ryan by Mr. Matthews, and refers also to the Nola matter.

Mr. Isseks: No objection to this, Your Honor.

The Court: It may be admitted.

* * * * * * *

Mr. Wall: We have handed to counsel for the government, the memorandum of the various parts of the infringement suit records, which we will offer, to check over tonight. They are the testimony of various witnesses in the infringement suits, which I mentioned before, would be offered for [fol. 11961] limited purposes, and as to certain exhibits that went in, in those suits, we shall try to agree that only the title of the exhibit, instead of the full exhibit, will be read into the record.

Mr. Isseks: I wonder, for the sake of helping us out, whether Mr. Wall would indicate now the limited purpose?

Mr. Wall: Well, I indicated it before. The names of the witnesses will be Howard, one of the Tucker & Reeves firm—I don't recall which,—one or the other, probably a Howard and a T & R employee, and William J. Miller. The purpose is to show that such testimony was given in those suits, the information conveyed by that testimony being available to the defendants in those suits.

* * * * * * *

[fol. 11962] Mr. Sayles: If Your Honor please, we were going to call John Lord O'Brian with reference to three patents. We have agreed with Mr. Isseks, subject to his objection, on the facts, the circumstances under which these patents were transferred.

Mr. Isseks: Your Honor, so we won't have much delay, I make the suggestion that it be marked as an exhibit, and Your Honor can rule at his leisure. Our objection is very simple, and I don't intend to argue it unless Your Honor wishes me to. We object on the ground that all the subject-matter of the stipulation is clearly within the category of settlement negotiations, and as such is improper evidence. That is all I want to say about it, Your Honor.

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[fol. 11963] The Court: What number do you give this?

Mr. Green: This will be Exhibit 6119.

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[fol. 11964] Offer to Prove

Mr. Goodrich: To refute various specific charges of the bill of complaint that defendant Hartford-Empire, by means of conspiracy or otherwise, has restrained trade in or restricted or stifled competition in the production and distribution of glass containers and other glassware products named in the bill;

And, for the further purpose of showing affirmatively in support of averments of its answer that Hartford-Empire, through the assistance and benefits it has rendered to its licensees, has increased and promoted the production and distribution of glassware of all sorts mentioned in the bill of complaint, and, by the same means, has promoted and fostered competition amongst and between its several licensees and in the glass container industry generally in the production and distribution of such glassware products:

Hartford-Empire Company and its associated individual defendants, offer to prove, through the witness Ralph C. Epstein:

(1) That as shown by Chart #27, offered in evidence as Exhibit H-5829 and refused, of four divisions of the glass industry, as measured by the number of workers, the Glass Container Division has, by far, the best record of employ-

ment during the period for which such records are available, namely, 1929 to 1935.

Using the employment figures of 1929 as a basis at 100%, the pressed and blown ware division (non-containers) de-
[fol. 11965] clined to about 77% in 1931, remained at about that level until the latter part of 1933, after which it climbed back to 100%, or the 1929 level, in 1935.

Employment in the window glass division declined to about 54% in 1931, recovering slowly thereafter until it reached about 81% in 1935.

Employment in the plate glass division sank to a low point of about 37% in 1933, having dropped percipitiously during 1930 and 1931. By 1935 it had recovered to a point only about 53% of its 1929 level.

Employment in the glass container division, however, declined to a low point in 1932 of about 75% and then climbed steadily and rapidly until in 1935 it reached a point of 120.5% or 20.5% above its 1929 level.

We offer to prove, further, by this witness, and for the same purposes:

(2) That as shown in Chart #28, offered in evidence as Exhibit H-5830, and refused, as measured by the number of workers employed in the glass container industry as against fifty-five other industries upon which data have been developed in an official study made by the Works Progress Administration, entitled, "Production, Employment and Productivity in Manufacturing Industries", employment in the glass container industry by 1936 had increased 20.5% over its 1929 level, whereas, in thirty-seven other industries, employment had declined: in eighteen other industries employment had increased, but in only three of those had it increased more than in the glass con-
[fol. 11966] tainer industry.

Thus, in the great majority of industries, the number of wage earners declined from 1929 to 1936, that is, the number was less in 1936; but in the glass containers the number increased markedly,—20.5% more.

In this chart, #28, the bars at the left of the center line indicate industries that showed decrease in the numbers of workers employed, while the bars to the right show the industries which recorded gains.

We offer to prove further by this witness, and for the same purposes:

(3) That as shown by chart #29, offered in evidence as Exhibit H-5831 and refused, the year-to-year employment in the glass container industry from 1929 to 1936, inclusive, has been much more stable than employment during that period of five leading industries, namely, bread-baking industry, cotton goods, steel works and rolling mills, motor vehicles, rubber tires and tubes.

Again using as a basis of 100% the 1929 employment level, the difference in course of employment in these six industries is quite apparent. The glass container industry is represented by a curve identical to that on Exhibit H-5829, reaching a point in 1936, 20.5% above its 1929 employment level.

The bread-baking industry declined in 1930 and 1931 to a low point of 86% in 1932, after which it recovered to a point of 112% in 1936.

The cotton goods industry declined in 1930 and 1931 [fol. 11967] to a low point of 70% in 1932, after which it recovered to a point of 92% in 1934, dropping back to 87% in 1935 and again advancing to 93% in 1936.

The steel works and rolling mills industry dropped precipitously in 1930 and 1931, to a low point of 54.5% in 1932, after which it climbed fairly steadily, reaching a high point of 104% in 1936.

The rubber tire and tube industry dropped to a low of 53% in 1932, recovering to a point of 66% in 1934, but declining again to 62% by 1936.

We offer to prove further by this witness, for the same purposes:

(4) That as shown by chart #30, offered in evidence as Exhibit H-5832, and refused, the average hourly earnings of workers in the glass container industry had substantially increased by 1936 over the wage scale prevailing in 1929. Out of a group of forty-five manufacturing industries, sixteen showed an average rate of hourly earnings, lower in 1936 than in 1929, the lowest showing a decrease of about 22½%. The others showed increases, the greatest increase being about 29½%.

The glass container industry stands fourteenth on the list, showing an increase of about 11% over the 1929 scale.

That is the average hourly wage, which, of course, does not fully disclose a worker's earnings unless combined with the number of hours employed. Consequently we offer to prove by this witness, and for the same purposes:

(5) That, as shown by chart #31, offered in evidence as [fol. 11968] Exhibit H-5833, and refused, the 1936 weekly earnings of workers in the glass industry compares very favorably with the 1929 level. Of the forty-five corporations studied, forty-four showed declines in average weekly earnings of their workers, the greatest decline being about 36%. Of that group, only one showed an increase, only three had declined less than that shown by the glass container industry, which was 9.5%. Since the price index of glass containers was about 25% lower in 1936 than in 1929, the fact that wages declined only 9.5% is quite significant, and is in marked contrast to the experience of other manufacturing concerns.

The Court: The bailiff may recess court until 9 o'clock tomorrow morning.

(Night adjournment.)

[fol. 11969] (The following proceedings were had out of the presence of the Court.)

Mr. Parham: Defendant Hartford-Empire offers in evidence the file wrapper contents of the following interferences:

As Exhibit H-6120, interference 39,374, Peiler vs. Chamberlin.

Mr. Lewis: The government objects to Exhibit H-6120.

Mr. Parham: As Exhibit H-6121-A and B, interference 39,378, Drey vs. Peiler;

As Exhibit H-6122, interference 39,428, Chamberlin vs. Peiler;

As H-6123, interference 40,515, Stenhouse vs. Peiler;

As Exhibit H-6124, interference 40,663, Tucker & Reeves vs. Drey vs. Wadsworth vs. Peiler vs. Chamberlin;

H-6125, interference 40,664, Drey vs. Peiler, vs. Chamberlin;

H-6126, interference 42,601, Peiler vs. Chamberlin;

H-6127, interference 42,765, Drey vs. Peiler vs. Steimer;

H-6128, interference 44,608, Peiler vs. Bridges;

H-6129, interference 44,609, Bridges vs. Peiler;

H-6130, interference 44,610, Peiler vs. Bridges;

H-6131, interference 44,780, Mulholland and Peiler vs. Whittemore;

H-6132, interference 45,288, Miller vs. Steimer;

H-6133, interference 48,200, Owens vs. Ferngren;

H-6134, interference 48,225, Lents vs. Ferngren;

[fol. 11970] H-6135, interference 48,226, Soubier vs. Ripley;

H-6136, interference 48,413, Bridges vs. Howard;

H-6137, interference 48,416, Bridges vs. Howard;

H-6138, interference 48,749, Drey vs. Soubier;

H-6139-A, docket entries and -B, interference papers in interference 48,948, Peiler vs. Whittemore;

H-6140, interference 50,236, Peiler vs. Rankin;

H-6141, interference 50,772, Peiler vs. Soubier;

H-6142, interference 50,773, Peiler vs. Soubier;

H-6143, interference 50,774, Soubier vs. Peiler;

H-6144, interference 50,784, Miller vs. Lobb;

H-6145, interference 40,893, Miller vs. Howard vs. Peiler vs. Ferngren;

H-6146, interference 50,894, O'Neill vs. Ferngren;

H-6147, interference 50,926, Howard vs. Miller;

H-6148, interference 53,436, Rankin vs. Howard;

H-6149, interference 56,263, Ingle vs. Peiler vs. Soubier;

H-6150, interference 66,913, Bridges vs. Peiler;

H-6151, interference 73,379, Eastwood vs. Nagle;

H-5694-A and B, additional papers in interference 55,728, Bridges vs. Headley & Thompson.

Mr. Lewis: The government renews its objection to Exhibits H-6120 to H-6151, inclusive, and H-5694-A and B. [fol. 11971] Mr. Parham: Hartford-Empire Company renews its offer appearing on the record at page 9346, et seq. of the complete file wrapper contents of the following interferences as substitutes for the exhibits as set out below, the said exhibits being physically present at this time; and the offer not including testimony where the same appears. The offer is made with the understanding that if the sub-

stitution is permitted, any and all objections and rulings as on any original exhibit, applies to its substitute.

Mr. Lewis: The government objects to the offer of these substitutes.

The said file wrapper contents being as follows:

Exhibits	Interferences
H-5389	39,375
H-5233	39,376
H-5390	39,377
H-5392	39,429
H-5380	40,122
H-5228	40,665
H-5234	43,442
H-5250	44,251
H-5251	44,252
H-5400	45,287
H-5252	46,677
H-5253	47,297
H-5254	48,197
H-5255	48,198
H-5256	48,199
H-5257	48,265

[fol. 11972]

H-5258	48,267
H-5259	48,326
H-5260	48,327
H-5261	48,328
H-5262	48,329
H-5263	48,330
H-5264	48,331
H-5265	48,414
H-5266	48,415
H-5267	48,447
H-5509	48,582
H-5268	49,069
H-5269	50,632
H-5510	50,700
H-5270	50,782
H-5271	50,783
H-5272	50,890
H-5273	50,891

Exhibits	Interferences
H-5274	50,895
H-5275	51,313
H-5276	51,314
H-5277	51,876
H-5278	52,072
H-5279	52,257
H-5280	52,258
H-5281	52,259
H-5282	52,260
H-5283	52,338

[fol. 11973] (At 9 o'clock a. m., Wednesday, January 21, 1942, the trial was resumed.)

The Court: What is it first you have to take up with, Hartford?

Mr. Parham: Your Honor, we have the question of the exhibits.

The Court: Have you been able to work anything out? You mean the interferences?

Mr. Parham: The interferences. No, I have not been able to get any agreement out of the government. I would like to offer them as physical exhibits, and show them stated for the record and as an offer.

* * * * * * *

[fol. 11974] The Court: All right, they will be admitted.

Mr. Apsey: May I be heard for a moment?

The Court: No; they will be admitted.

[fol. 11975] Exhibits H-6114 is denied, and H-6115 falls with it.

* * * * * * *

[fol 11976] Mr. Goodrich: One more thing, if Your Honor please. Mr. Apsey and I have agreed, finally, on a stipulation covering certain matters of testimony of Mr. Peiler, Mr. Hunter and Mr. Hansen. We have agreed to the last word and the last testimony. May we have that typed during the day and file it with the Clerk as soon as we can, and may I now have a number as applying to it, and offer it?

The Court: You may have a number assigned to it and it will be admitted.

Mr. Goodrich: I take it it will be agreeable to the Court if it is filed at any time today or tomorrow?

The Court: Yes.

(Said exhibit to be marked H-6152.)

The Court: Anything else from Hartford-Empire?

Mr. Wall: Yes, Your Honor. First I have two sheets [fol. 11977] of paper which I have shown to Mr. Isseks, which I desire to offer and furnish copies of later, as Exhibits H-6153: letter from Owens Bottle Company, copy of it, to Thatcher Manufacturing Company, of September 3, 1921, being an infringement notice, infringement of Brookfield patents.

Mr. Isseks: No objection.

Mr. Wall: And as H-6154, copy of letter from F. G. Smith to Thatcher Manufacturing Company of September 7, 1921, in regard to that same notice of infringement. Those two are offered.

Mr. Isseks: No objection, Your Honor.

The Court: They may be admitted.

Mr. Wall: Now, if Your Honor please, as to this next matter I can indicate what we are going to do and if Your Honor thinks best I can take care of it in the absence of the Court by supplying the information to the stenographer.

First, I am going to offer as exhibits, about eight or nine of them, certain portions of the testimony of certain infringement cases, as I indicated yesterday and for the purpose I mentioned. And then,—and this is what will take a little time,—I want to dictate merely the captions, or titles, of exhibits which we will agree are in the record, instead of offering them in full.

* * * * * * *

[fol. 11978] Mr. Isseks: Your Honor, my associate, Mr. Shields, has gone over the list furnished us by Mr. Wall and with the understanding it goes in for the limited purpose which counsel has indicated, we make no objection. We are not going to make any additions, either.

The Court: What is this thing?

Mr. Isseks: The next I offer as Exhibit 2002 a license and lease from Hartford to Pittsburgh-Corning Corporation, dated September 28, 1937. It is the license and lease in connection with the Hartford single feeder.

Mr. Wall: That is for glass blocks?

Mr. Isseks: It is a single feeder. I forget what the limitation is.

As 2003, we offer license and lease from Hartford——

[fol. 11979] (Added to record on January 23, 1942, by agreement.)

Mr. Wall: Defendant Hartford-Empire and associated individual defendants offer in evidence, for the limited purposes already stated, the following exhibits numbered H-6155 to H-6171, inclusive:

Exhibit H-6155, Testimony of O. M. Tucker given on behalf of defendant in the case of Hartford-Empire Co. v. Obear-Nester Glass Co. (first suit) as appearing in Vol. 1, pages 635-636, in the Appeal Record of said case, C. C. A. 8, 39 F. (2d) 769.

Exhibit H-6156, Testimony of D. L. Middendorf given on behalf of defendant in the case of Hartford-Empire Co. v. Obear-Nester Glass Co. (first suit) as appearing in Vol. 1, page 637, in the Appeal Record of said case, C. A. A. 8, 39 F. (2d) 769.

I note for the transcript here that the four sheets of drawings of the Tucker & Reeves feeder, referred to on page 636, were not included in the appeal record.

Mr. Isseks: That is correct.

Mr. Wall: I offer as Exhibit H-6157 testimony of George E. Howard given on behalf of defendant in the case of Hartford-Empire Co. v. Obear-Nester Glass Co. (first suit) as appearing in Vol. 1, pages, 637-640 in the Appeal Record of said case, C. C. A. 8, 39 F. (2d) 769.

Exhibit H-6158, Answer of Kearns-Gorsuch Bottle Co. to Amended Bill of Complaint of Hartford-Empire Company in case of Hartford-Empire Co. v. Kearns-Gorsuch Bottle Co., as appearing in Vol. 1, at pages 17-25 of the Appeal [fol. 11980] Record of said case, C. C. A. 6, 58 F. (2d) 701.

Exhibit H-6159, Part of Report of Special Master in said case of Hartford-Empire Co. v. Kearns-Gorsuch Bottle Co., as appearing in Vol. 1, at pages 61-66, of the Appeal Record in said case, C. C. A. 6, 58 F. (2d) 701.

Exhibit H-6160, Testimony of O. M. Tucker given on behalf of defendant in said case of Hartford-Empire Co. v. Kearns-Gorsuch Bottle Co., as appearing in Vol. 2, at pages 673-683, of the Appeal Record in said case, C. C. A. 6, 58 F. (2d) 701.

I desire to note here that in connection with Mr. Tucker's testimony, the defendant Kearns-Gorsuch Co. offered the following exhibits, consisting of Patent Office applications and interference papers, which were received in evidence and appear in the printed appeal record as follows:

Defendant's Exh. T—Interference 46,677 miscellaneous papers, Vol. 8, page 251 (included as part of plaintiff's Exhibit 71).

Defendant's Exh. U—Tucker & Reeves 1913 application, Serial No. 797,067, as filed, Vol. 9, page 478.

Defendant's Exh. U-1)

Defendant's Exh. U-2)—Tucker & Reeves British patents 105, 564 and 109,782, Vol. 9, page 486 and plaintiff's Exhibit 70.

[fol. 11981] Defendant's Exh. II-C—Interference 44,251, certain papers Vol. 8, page 1101.

Defendant's Exh. II-D—Interference 51,313, certain papers, Vol. 8, page 1115.

Defendant's Exh. II-E—Tucker & Reeves 1913 application, Serial No. 797,067, file wrapper Covers, Vol. 8, pages 1098-1100.

Mr. Isseks: That is correct.

Mr. Wall: I offer as Exhibit H-6161 Testimony of O. M. Tucker, being a deposition taken under subpoena issued by the defendant in the case of Hartford-Empire Co. v. Nivison-Weiskopf Co., as appearing in Vol. 1, pages 577-598, in the Appeal Record of said case, C. C. A. 6, 58 F. (2d) 701.

I desire to note that in connection with this deposition, the defendant Nivison-Weiskopf Co. offered the following exhibits, mainly consisting of Patent Office applications and interference papers which were received in evidence and appear in the printed appeal record as follows:

Defendant's Exh. A—Tucker & Reeves September 1916 application, Serial No. 120,429, as filed, Vol. 5, page 73 (now patent No. 1,864,275).

Defendant's Exh. B—Tucker & Reeves April 1916 application, Serial No. 90,099, as filed, Vol. 5, page 11.

[fol. 11982] Defendant's Exh. C—Tucker & Reeves 1913 application, Serial No. 797,067, as filed, Vol. 5, page 1a. The index of the file wrapper of this application was plaintiff's Exhibit 72.

Defendant's Exh. D—Sketch made by Tucker of 1913 Tucker & Reeves apparatus, Vol. 2, page 227.

Defendant's Exh. E—Interference 50,891, Tucker & Reeves, preliminary statement, Vol. 6, page 24.

Defendant's Exh. F—Interference 51,313 Tucker & Reeves, preliminary statement, Vol. 6, page 26.

Defendant's Exh. G—Tucker & Reeves 1922 application, Serial No. 605,751, letter to Patent Office March 6, 1924, Vol. 5, page 236.

Defendant's Exh. H—Tucker & Reeves 1922 application, Serial No. 605,751, as filed, Vol. 5, page 198 (now patent No. 1,908,936).

Defendant's Exh. I—Tucker & Reeves March 1918 application, Serial No. 220,959, as filed, Vol. 5, page 141 (now patent No. 1,864,276).

[fol. 11983] Defendant's Exh. J—Tucker & Reeves application of August 1918, Serial No. 249,422, Vol. 5, page 171.

Additional exhibits of defendant relating to Tucker & Reeves were:

Defendant's Exh. O—Interference 44,251, papers 150, 151, 159, Vol. 6, page 129. Additional papers in this interference were plaintiff's Exhibit 47, Vol. 6, page 83.

Defendant's Exh. P—Interference 46,677, pages from paper 133 and papers 134 and 135, Vol. 6, page 212. Additional papers in this interference were plaintiff's Exhibit 48, Vol. 6, page 178.

Defendant's Exhibits T-1 to T-7 and T-10 to T-17 and U-1 to U-5 included various interference papers relating to Tucker & Reeves interferences.

Mr. Isseks: That is correct.

Mr. Wall: I offer as Exhibit H-6162 Testimony of Wm. J. Miller, on behalf of defendant in said case of Hartford-Empire Co. v. Nivison-Weiskopf Co., as appearing in Vol. 1, pages 561-576, in the Appeal Record of said case, C. C. A. 6, 58 F. (2d) 701.

[fol. 11984] I desire to note that Wm. J. Miller's testimony in the Nivison-Weiskopf suit is identical with the Miller testimony in the Hazel-Atlas suit, having been stipulated into the record of the Nivison-Weiskopf suit after being taken in the Hazel-Atlas suit.

I also desire to note that in connection with his testimony in the Nivison-Weiskopf case, the defendant Nivison-Weis-

kopf Co. offered exhibits which were received in evidence and appear in the printed appeal record as follows:

Defendant's Exh. N—Miller application of September 23, 1919, Serial No. 325,616, as filed, Vol. 5, pages 177-A to 197.

Defendant's Exh. WJM-1—Foster patent 691,371, Vol. 7, page 12.

Defendant's Exh. WJM-2—Miller patent 937,626, Vol. 7, page 59.

Defendant's Exh. WJM-3—Miller patent 1,260,428, Vol. 7, page 130.

Defendant's Exh. WJM-4—Drawing entitled "Miller Feeder," Vol. 2, page 305.

Defendant's Exhibits T-8, T-9, T-10, T-11, T-12, T-15 and T-17 relate to interference proceedings involving Miller and Hartford applications.

Mr. Isseks: That is correct.

[fol. 11985] Mr. Wall: I offer as Exhibit H-6163 Testimony of George E. Howard given on behalf of defendant in the said case of Hartford Empire Co. v. Nivison-Weiskopf Co., as appearing in Vol. 1, pages 493-538, in the Appeal Record of said case, C. C. A. 6, 58 F. (2d) 701.

I desire to note that in connection with Mr. Howard's testimony, the defendant Nivison-Weiskopf Co. offered the following exhibits which were received in evidence and appear in the printed appeal record, as follows:

Defendant's Exh. GEH-1—Sheet from National Glass Budget, June 30, 1917, Vol. 2, page 277.

Defendant's Exh. GEM-2—Photograph accompanying GEH-1, Vol. 2, page 273.

Defendant's Exh. GEH-3—Howard Patent 1,315,668, Vol. 7, page 169.

Defendant's Exh. GEH-4—Drawing of Howard feeder of 1916, Vol. 2, page 279.

Defendant's Exh. GEH-5—File wrapper, Howard application of July 16, 1917, Vol. 5, page 119 (now patents 1,796,929 and 1,797,206, both dated March 17, 1921).

Defendant's Exh. GEH-6—Correspondence between Howard and W. J. Miller (25 sheets), Vol. 2, page 230.

Defendant's Exh. GEH-7—Interference 50,891, preliminary statement of Howard, Vol. 6, page 22.

[fol. 11986] Mr. Isseks: That is correct.

Mr. Wall: I offer as Exhibit H-6164 Testimony of George E. Howard in rebuttal for plaintiff in said suit of

Hartford-Empire Co. v. Nivison-Weiskopf Co., as appearing in Vol. 1, pages 398-400, in the Appeal Record of said case, C. C. A. 6, 58 F. (2d) 701.

In connection with this testimony, both plaintiff and defendant offered exhibits relating to Howard which were received and appear in the printed record as follows:

Plaintiff's Exh. 68—File wrapper and contents of Howard patent 1,315,668, Vol. 5, page 19.

Plaintiff's Exh. 69—File wrapper and contents of Howard 1917 application, Serial No. 180,795 to date of filing new complaint (physical exhibit), Vol. 1, pages 400-1.

Defendant's Exh. 70—Howard preliminary statements in interferences 45,287 and 48,326 and Peiler preliminary statement in Interferences 48,326 and 50,891, Vol. 2, pages 60-64.

Defendant's Exh. 71—Howard patent 1,231,610, Vol. 7, page 122.

Defendant's Exh. EE—Howard British patent 120,744, Vol. 7, page 313.

[fol. 11987] Mr. Isseks: That is correct.

Mr. Wall: I offer as Exhibit H-6165 Testimony of Frank E. Troutman, on behalf of defendant in said case of Hartford-Empire Co. v. Nivison-Weiskopf Co., as appearing in Vol. 1, pages 538, to 544, in the Appeal Record of said case, C. C. A. 6, 58 F. (2d) 701.

I offer as Exhibit H-6166 Testimony of Charles H. Christie on behalf of defendant in said case of Hartford-Empire Co. v. Nivison-Weiskopf Co., as appearing in Vol. 1, pages 545-556, in the Appeal Record of said case, C. C. A. 6, 58 F. (2d) 701.

I offer as exhibit H-6167, Testimony of Wm. J. Miller given on behalf of defendant in the case of Hartford-Empire Co. y. Hazel-Atlas Glass Co., as appearing in Vol. 1, pages 486-503, in the Appeal Record of said case, C. C. A. 3, 39 F. (2d) 111.

In connection with Mr. Miller's testimony, the defendant offered the following exhibits which were received and appear in the printed Appeal Record as follows:

Defendant's Exh. M-1—Miller patent 937,626, Vol. 6, page 79.

Defendant's Exh. M-2—Miller patent 1,260,428, Vol. 6, page 167.

Defendant's Exh. M-3 Foster patent 691,371, Vol. 6, page 23.

Defendant's Exh. HH—A book of copies of the Patent Office interference proceedings containing many papers relating to interferences in which Miller—as involved.

[fol. 11988] Mr. Isseks: That is correct.

Mr. Wall: I offer as Exhibit H-6168, Testimony of George E. Howard given on behalf of defendant in the case of Hartford Empire Co. v. Hazel-Atlas Glass Co. as appearing in Vol. II, pages 513-623 of the appeal record in said case, C. C. A. 3, 39 F. (2d) 111.

I offer as Exhibit H-6169, request by Mr. Philbin in the trial of said case of Hartford-Empire Co. v. Hazel-Atlas Glass Co. for certain papers and so forth appearing in Vol. 2, page 564 of the appeal record in said case, C. C. A. 3, 39 F. (2d) 111.

During Mr. Howard's testimony, the following exhibits were offered. They were received in evidence and are found in the appeal record as indicated below:

Defendant's Exh. Q-1 to Q-9—Cards signed by Howard visitors in 1917, Vol. 6, page 489.

Defendant's Exh. R-1—National Glass Budget for June 30, 1917, Vol. 6, page 607.

Defendant's Exh. R-2—Page 9 of R-1, Vol. 6, page 609.

Defendant's Exh. S—Howard drawing of February 1916, Vol. 6, page 431.

Defendant's Exh. T—Howard preliminary statement in Interference 45,287, Vol. 7-A, page 1.

[fol. 11989] Defendant's Exh. U-1 to U-4—Howard preliminary statements in Interferences 48,326, 48,327, 50,891, 50,893, Vol. 6, pages 611-617.

Defendant's Exh. Z-1—Patent Office history, Howard patent 1,315,668, Vol. 6, page 433.

Defendant's Exh. Z-2—Patent Office history, Howard patent application 1917, Serial No. 180,795 to Jan. 12, 1926, Vol. 6, page 491.

Defendant's Exh. FF-1—Howard drawing, Vol. 6, page 429.

Defendant's Exh. FF-2—Howard drawing, Vol. 6, page 653.

Defendant's Exh. GG—Howard preliminary statement, Interference 50,895, Vol. 7-A, page 7.

Defendant's Exh. HH—Book of interference papers, many relating to Howard (physical).

Defendant's Exh. KK—Correspondence, Miller and Howard, Vol. 6, page 619.

Plaintiff's Exh. 58—Howard patent 1,231,610, Vol. 4, page 351.

Plaintiff's Exh. 59—Howard 1916 drawing, Vol. 4, page 355.

[fol. 11990] Plaintiff's Exh. 60(a) to 60(h)—Howard drawings, 1916-1917, Vol. 4, page 357.

Plaintiff's Exh. 61—Howard memo of gas consumption, Vol. 4, page 365.

Plaintiff's Exh. 62—Letter, Hamilton to McCauley, Vol. 4, page 367.

Plaintiff's Exh. 63—Postal card, Howard to Hamilton, Vol. 4, page 369.

Plaintiff's Exh. 64(a) to 64(e)—Bottles produced by Howard (physical).

Plaintiff's Exh. 65—Letter, Hamilton to Smith, Vol. 4, page 371.

Plaintiff's Exh. 66—Howard 1916 drawing, Vol. 4, page 373.

Plaintiff's Exh. 67—Letter, Howard to Hamilton, Vol. 4, page 375.

Plaintiff's Exh. 68—Correspondence, Miller and Howard, Vol. 6, page 619.

Defendant's Exh. HH—A volume of Patent Office interference papers containing many papers relating to interferences in which applications of Howard were involved.

Mr. Isseks: That is correct.

[fol. 11991] Mr. Wall: I offer as Exhibit H-6170, Testimony of J. Harrison McNash, given on behalf of defendant in the case of Hartford-Empire Co. v. Hazel-Atlas Glass Co., as appearing in Vol. 1, pages 349-350, of the Appeal Record in said case, C. C. A. 3, 39 F. (2d) 111.

The copy of the Hartford-Owens agreement of April 9, 1924, produced by the witness J. Harrison McNash during this testimony, appears as Defendant's Exhibit JJ, which is printed in Volume 7-A of the appeal record in said case at pages 19 to 62. This exhibit is the same as Government's Exhibit 55 in the present suit, except that as offered in the Hazel-Atlas case, it was an unsigned copy and omitted Schedule A which appears in Government's Exhibit 55.

Mr. Isseks: That is correct.

Mr. Wall: I offer as Exhibit H-6171 an excerpt from the testimony of Karl E. Peiler in the case of Hartford-Em-

pire Co. v. Hazel-Atlas Glass Co., as appearing in Vol. 1, page 289, line 3, to page 292, line 12, of the Appeal Record in said case, C. C. A. 3, 59 F. (2d) 111.

Mr. Wall: Where I have referred in the above offers to testimony being given "on behalf of defendant," I mean, of course, the defendants in the respective infringement suits which I mentioned, not the defendant in this present case.

The Court: Exhibits H-6155 to H-6171, inclusive, are admitted.

[fol. 11992] Empire to Kimble Glass Company, which is dated September 14, 1939.

The next one, Your Honor, is a license of Pratt Rankin patent rights, Hartford-Empire to Owens Bottle, dated February 16, 1929.

Mr. Middleton: I didn't get that?

Mr. Isseks: It is from the Hartford-Empire Company to Owens Bottle Company regarding Pratt Rankin patent rights.

Mr. Middleton: Is it a letter?

Mr. Isseks: It is a contract. It is dated February 16, 1929, and it is signed by Mr. F. Goodwin Smith and Mr. Boshart.

Has Your Honor admitted these three exhibits?

The Court: They may be admitted.

Mr. Isseks: The next one is Minutes of the Hartford Board of Directors of May 17, 1932.

Mr. Middleton: What is the number for the other one?

Mr. Isseks: The number for the Hartford-Empire contract to Owens Bottle is Government's Exhibit 2004.

The Court: These minutes are of what board?

Mr. Isseks: Hartford-Empire Company, of May 17, 1932, photostatic copy of the original minutes showing the signature of Mr. F. Goodwin Smith.

The Court: Of the board of directors?

Mr. Isseks: Yes. Offered as Government's Exhibit 2005.

The Court: It may be admitted.

[fol. 11993] Mr. Isseks: There are two other final matters here. In connection with the examination of Mr. Eldred, Mr. Eldred testified as to certain Miller feeders built by Knox. The government asked for a list of those feeders. Mr. Carlisle handed us a list and we checked it by sending it to Mr. Underwood of the Knox Glass Associates. I have

talked with Mr. Carlisle this morning and he indicated he had no objection to our putting in the list he furnished us of the Miller feeders. He has changed the word "shipped" to "licensed" "to Knox, subsequent to August 25, 1933". It should be '32, he says. I will change it to "'32". I would like to offer it as the next exhibit, Government's Exhibit 2006.

The Court: It may be admitted.

[fols. 11994-11996] Mr. Isseks: And then, Your Honor, I want to read as if it were testified to, the following statement from a letter of Mr. Underwood to Mr. Kramer—Mr. Kramer says that it is alright, rather than call the witness—Mr. Underwood states in this letter to Mr. Kramer: "You will please be advised that in most all cases we obtained the mechanism from either the Miller Engineering Company or the Swissvale Glass Machinery Company, and constructed the feeders, or rather assembled the same in our plant". And that, Your Honor, will be in lieu of calling Mr. Underwood.

The Court: Alright.

Mr. Middleton: That is not an exhibit.

Mr. Isseks: There is one further thing we would like to mark for identification the list of the decisions in the Interferences which are set forth in Government Exhibit 973. Mr. Parham has indicated to Mr. Shields that subject to check there will be no objection to this list, and I would like to mark it for identification with the understanding, Your Honor, that if Your Honor does not hear further from either us or counsel for Hartford, the document will be received in evidence.

Mr. Parham: I think that is alright, Your Honor; I have not had time to check it back.

Mr. Isseks: You agree to the principle of it?

Mr. Parham: Yes, alright, as your exhibit.

* * * * * * *

[fol. 11997] The Court: Now, Judge Sayles, you have a matter with reference to the Corning Company?

Judge Sayles: Yes, Your Honor.

The Court: A stipulation that is signed by——

Judge Sales: Signed by the government and signed by Hartford, and signed by us.

The Court: I am wondering what relevancy—what proving force it will have in this record, to recite negotiations

that were had looking towards settlement of the case months before the trial began. What do you claim for that?

Judge Sayles: This, if Your Honor please—you remember we were going to call Mr. O'Brian, and Mr. O'Brian was rather anxious to come here and do that, and then the war broke out, and he couldn't get away. It seems to me that it is clearly admissible to show under what circumstances we made the transfers, that Hartford made transfers to Corning after the trial started. The situation was then that——

The Court: Well, it would be received, if the Court received it at all, only for that purpose.

Judge Sayles: It would seem as if it should be received for further purposes, if Your Honor please, on account of this situation. You remember back in September 1940—I don't know whether it has come back to Your Honor—under the order of this Court, as I understand it, the summaries of practices complained of and the relief requested [fol. 11998] were served by the government on all other parties. Then at the opening of the hearing on that day you asked what had become of that. Well, now, that was put out, as I thought—Your Honor had it done so we could meet with that situation and try to see what we could get done that the government asked us to do to narrow the issues and go on with the lawsuit if we had to, and if we didn't have to, to settle, and you remember after that all the supplemental answers were put in. Now, with reference to the Corning situation, they asked that all rights we got under the 1916 contract and the 1922 contract—they asked that those contracts be canceled. Well, we were working towards that end. We were ready to cancel any rights that we had under the 1916 contract or the '22 contract with reference to any of the Hartford's machines. And it developed—I don't know whether Your Honor remembers or not—in the evidence that there were three patents that Hartford had which they claimed read on Corning's machines, and it was the transfer of those patents to us that we want to explain. Now, we asked that we keep the exclusive that we had at that time in these patents not on Hartford machines, but on our machines, and then Mr. Isseks suggested this, as long as we said that they were not used by Hartford in any way, and you will remember the testimony, Your Honor, you might as

well, in order that there be not in any license granted by Hartford any restrictions, that the patents be transferred. Now, it seems as if that ought to be before the Court. There isn't any question of dickering.

The Court: Well, it seems to me that if you want to [fol. 11999] show in the record why the 1916 and '22 contracts came to be cancelled, and if you want to show how the three exclusive rights to these three patents came to be transferred to the hands of Corning—if that is the purpose, then it seems to me that may be done; but if it is done for the purpose of showing the progress or the extent to which settlement negotiations were carried, that, it seems to me, has no part in the record.

Mr. Sayles: Well, I accept Your Honor's suggestion.

Mr. Isseks: Well, then I would like to make it clear that we object to it if it is going to be admitted on any theory of estoppel against the government, because we were certainly negotiating for a settlement, and we had no thought that we were going to——

The Court: I don't think it should be admitted on any theory of estoppel; that is out.

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[fol. 12000] The Court: Well, Exhibit C-6119 will be admitted then, under the conditions which we have just discussed, which are on the record.

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[fol. 12001] The Court: Next, I believe, is the Owens-Illinois?

Mr. Williams: May it please Your Honor, I wish to introduce into the record a number of amendments made by Owens and Hartford to their outstanding contracts. I will have them numbered consecutively, and then introduced. First, is an amendment to the general license from Owens-Illinois Glass Company and Owens-Illinois Pacific Coast Company to Hartford-Empire Company, marked for identification Exhibit O-6173.

Mr. Isseks: No objection.

The Court: Now, you will have to go just a little more slowly—an amendment to the general license——

[fol. 12002] Mr. Williams: To the general license from Owens and Owens-Pacific, if you want to shorten them, to Hartford.

The Court: Without objection, that will be admitted.

Mr. Williams: That is dated January 14, 1942. The effect of this is to remove the exclusions and limitations from the ware to be made.

The next is an amendment to the general license from Hartford to Owens dated January 14, 1942, marked for identification Exhibit O-6174. The effect of this is also to remove the exclusion from the ware to be made, and I may say also it shows the new schedule of rates. There was supposed to have been executed some months ago an agreement that was circulated by Hartford among its licensees pursuant to its letter of October 10, 1940, advising of the removal of exclusions and changing of the rates. For some unexplained reason it was overlooked on Owens' part, and that agreement was not made, but this agreement serves the same function.

The Court: That may be admitted.

Mr. Williams: The next is an amendment to suction inventions license agreement between Hartford and Owens. It is dated also the 14th of January, 1942, marked Exhibit O-6175. The effect of this is to remove the exclusions from both sides.

The Court: Without objection, it may be admitted.

Mr. Williams: The next is amendment to consolidated feeder and former license and lease between Owens and [fol. 12003] Hartford. It likewise is dated January 14, 1942, and is marked for identification Exhibit O-6176.

Mr. Isseks: No objection.

Mr. Williams: This makes sundry changes in that form, the form attached to the license to the same effect, to remove the exclusions and limitations.

Mr. Isseks: No objection, Your Honor.

The Court: It may be admitted.

Mr. Williams: The next is an agreement dated March 14, 1939, a letter agreement between Owens and Hartford, marked for identification Exhibit O-6177.

Mr. Isseks: No objection.

Mr. Williams: The principal function of that is to remove a tying clause that was in that consolidated stacker and conveyor agreement.

The Court: Now, just a minute—give me the date of that again, please.

Mr. Williams: The date of this was March 14, 1939.

The Court: That will be admitted.

Mr. Williams: The next few papers refer to the license agreement of 1935 between Owens-Illinois Glass Company and Hazel-Atlas Glass Company. The first is a letter dated January 2, 1942, from Lloyd T. Williams to Mr. Stephen H. Philbin.

Mr. Isseks: No objection.

Mr. Williams: Marked for identification O-6178. This letter simply transmits to Mr. Philbin a waiver on the part of Owens-Illinois Glass Company to certain rights in the [fol. 12004] 1935 agreement. We waive the exclusions—that is, the ware excluded—that we waive those exclusions excepting the one that pertains to fibers, which we have assumed is not in this case, the glass fibers.

Mr. Isseks: No objection, Your Honor.

The Court: It will be admitted.

Mr. Williams: The next is an acknowledgement, Exhibit 6180——

Mr. Parham: 6180, or 79?

Mr. Williams: The waiver itself was 6179.

Mr. Parham: 6178.

Mr. Williams: Oh, yes.

Mr. Isseks: No objection.

The Court: The waiver may be admitted.

Mr. Williams: Then Exhibit 6180, a letter from Mr. Philbin to Mr. Williams, acknowledging receipt of the letter and waiver.

Mr. Isseks: No objection.

Mr. Parham: What date is that, Mr. Williams?

Mr. Williams: That is dated January 6, 1942.

The Court: 6180 will be admitted.

Mr. Williams: Next is a letter dated January 16, 1942, from Mr. Williams to Mr. Philbin marked for identification 6181.

Mr. Isseks: No objection.

Mr. Williams: Transmitting a similar waiver signed by Owens-Illinois Pacific Coast Company. I may explain the reason for that was Illinois Pacific Coast Company had [fol. 12005] certain rights granted to it under that 1935 agreement.

And the final one is the waiver by the Illinois Pacific Coast Company marked for identification Exhibit O-6182. This is a waiver on the part of the Owens-Illinois Pacific Coast Company of the same character as that executed by Owens-Illinois Glass Company.

Mr. Isseks: No objection.

The Court: 6181 and 6182 will be admitted.

Mr. Williams: I think it may be in order just for the information of the Court to explain the reason for there being exclusions in the 1935 contract between Owens and Hazel. That arises from the fact that the 1924 license from Owens to Hartford was exclusive and remained exclusive until '32. And as we conceived it as a matter of law, the rights to Corning from Hartford flowing pursuant to the 1916 and 1922 agreements, would include such rights as Hartford got from Owens under the '24 agreement, and therefore we had to make the same exclusions in the '32 and '35 contract, the '35 contract especially as to those rights that may have flowed to Corning during the period of '24 to '32. Any rights that accrued after '32 were non-exclusive in Hartford. So that was the reason for these exclusions in the license from Owens to Hazel in '35. We did not dare give a license without that limitation because of the exclusive rights of Corning.

Mr. Wood: I have just a few loose ends to clean up, Your Honor. I would like the record to show without calling the witness, that the Owens Company closed down its Toledo [fol. 12006] plant in 1927, and has not reopened its Toledo container plant. The Libbey plant makes paste mold ware on a different type of machinery, the plant of the Libbey Company which was acquired in '35. So Owens has had no plants in this district from 1927 down to the present time.

Mr. Isseks: I should like to know the purpose of this statement.

Mr. Wood: The purpose of the statement is this: There was talk of a possible factory in Detroit at one time, and it might be considered by someone since Owens' headquarters is in Toledo they may have a factory here. We want to show there is no factory in this region.

Mr. Isseks: No objection as evidence.

The Court: Very well.

Mr. Wood: The next point, Mr. Isseks asked for a list of AO Machines, that is, patents covering the Owens AO Machines. Those patents ought to be over here at any time, so I shall ask that the next exhibit number be reserved for the group of Owens' patents covering the AO Machine.

Mr. Isseks: No objection.

The Court: They are the physical patents?

Mr. Wood: Yes, as distinguished from the list?

The Court: As distinguished from the list?

Mr. Wood: I will put in the list and the patents, too, but give them one exhibit number.

The Court: They have reference to what?

Mr. Wood: The AO Machine. That is a recent type [fol. 12007] Owens machine.

The Court: That will be O-6183. You will have them here some time today?

Mr. Wood: Yes.

Mr. Isseks: No objection.

The Court: O-6183 may be admitted.

Mr. Wood: Mr. Isseks requested information in respect to the discontinuance of use of the Owens CA type machine. You will remember that is the big double diphead machine, the unusual type, ten-arm double diphead which was used on small prescription ware. I find in that respect Exhibit O-5958 may be incorrect in that it specifies the last use of this machine to have taken place in 1925. We find there were two of the machines—we can't say they were used continuously—we don't know whether they were or not, but one of these machines was last used in 1927 and was replaced by an AQ Machine making gallon bottles. In other words, the type of ware was changed from small prescription to gallon bottles. The second CA Machine was in use as late as the summer of '29, but was replaced with an AR Machine, which, as the testimony shows, was a machine manufacturing beer bottles or soda bottles or that type of ware. We have not been able to find any written explanations as to why the changes were made.

Mr. Isseks: We will take counsel's statement in lieu of evidence.

The Court: Very well.

Mr. Wood: Mr. Isseks agreed he would permit me to state the number of free feeders which were used by Owens [fol. 12008] between '24 and '32. I find it to be as follows:

In 1925, two Hartford single feeders, 16 Owens feeders, making a total of 18 free feeders.

In 1926, 8 Hartford single feeders, 16 Owens feeders, making a total of 24 free feeders.

In 1927, 8 Hartford single feeders, 14 Owens feeders, making a total of 22 free feeders.

In 1928, 8 Hartford single feeders, 11 Owens feeders, making a total of 19 free feeders.

In 1929, a total of 8 Hartford single feeders and 8 Owens feeders, making a total of 16 free feeders.

In 1930, a total of 8 Hartford single feeders and 8 Owens feeders, making a total of 16 free feeders.

In 1931, a total of 8 Hartford single feeders and 8 Owens feeders, making a total of 16 free feeders.

In 1932, a total of 8 Hartford single feeders, no Owens feeders, making a total of 8 free feeders.

Mr. Isseks: We accept counsel's statement in lieu of testimony.

The Court: Very well.

Mr. Wood: I think it is the implication of the evidence, though there may not be a positive statement in the record, that the Owens machinery listed on Exhibit O-5958 comprises all of the suction type of equipment. That is all the bottle-making equipment other than the feeder-former equipment, used by Owens in its plants for the manufacture of containers, at the present time and over the period covered by evidence in the case.

[fols. 12009-12010] Mr. Isseks: If counsel makes such statement, we will take that in lieu of testimony.

Mr. Wood: I think it is an implication and I would like it as a statement.

I find on Exhibit O-6096, on the sheet headed, "Patents Applying to the AV Machine", that there is a discrepancy with O-5958. The exhibit now shows the last patent covering this machine expired in 1930.

Mr. Middleton: May we hear that again?

Mr. Wood: In Exhibit O-6096 it shows that the last patent on the AV Machine expired in 1930, whereas, O-5958 shows 1933. In any event the LaFrance dip head patent should be included on the patents listed on that exhibit as applicable to the AV Machine to make the last date of expiration 1933 instead of 1930.

Mr. Isseks: No objection.

The Court: Very well.

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[fols. 12011-12014] Mr. Wood: Now, I have one stipulation which is being prepared right now, that in no way adds to the evidence of the case because it is already in evidence in different places in the record. That is with reference to the Owens' position at the time of the suits and settlements. The evidence is scattered all through the rec-

ord put in by people in other places, and this stipulation assembles it in relation to Owens. That will be over before the day is over.

Mr. Isseks: If the stipulation sets forth the facts there will be no difficulty.

The Court: Do you want to set aside a number for it?

Mr. Wood: Yes. I would like to set aside a number for it.

The Court: That will be O-6184. It will be admitted.

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[fol. 12015] Mr. Isseks: They are about to give it to us.

Before Mr. Middleton goes forward with some further matters relating to Owens, I would like to take up two matters Mr. Wood and I wish to clear up.

One is, we offered a list of Owens patents issued on applications involved in the 138 interferences listed in Exhibit 973 and not listed in the two books of Owens' patents, Exhibits 5952 and 5953. Mr. Wood said yesterday he would be willing to let these documents go into evidence subject to correction. That is agreeable to us.

Mr. Wood: That is correct.

The Court: 2008.

Mr. Isseks: There is one other matter I had up with Mr. Wood.

The Court: 2008 may be admitted.

Mr. Isseks: There is one other matter that will take about two minutes. We would like to offer in evidence an [fol. 12016] excerpt from the minutes of the Patent Department Committee. I am not going to make it an exhibit; I am going to read it in:

"Minutes of the Patent Department Committee Meeting Thursday p. m., April 13, 1922.
Present: Messrs. H. W. Carter, C. A. Rowley, and John F. Rule."

I am going to read the excerpt from the minutes in the record. I understand there is no objection.

Mr. Wood: That is right.

Mr. Isseks: (Reading)

"Mr. Rule reported that the Soubier India Ink bottle, referred to in the minutes of the P. D. C. of April 7th, has been submitted to Mr. Morrison. He states that the

Hazel-Atlas Company have the rights on desk inks, which would include this invention, so that the Owens Company could not make them. He says further that this style of bottle could not be made on an Owens machine, and would be difficult to make by hand. The committee recommend that it be dropped."

Mr. Wood: I take it that that is offered for the purpose of showing the existence of exclusive rights in Hazel-Atlas?

Mr. Isseks: That is right.

Mr. Wood: And, of course, it is our position that getting rid of those exclusive rights in Hazel-Atlas was one of the purposes of the July 1, 1932, settlement.

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[fol. 12017] Mr. Middleton: During the course of the trial, Your Honor, requests have been made from time to time that Owens furnish certain information.

We have tried to collect those items and I have quite a number of them here.

The tabulation of the stockholdings in the other corporate defendants by the officers and directors of Owens as of some [fol. 12018] present date—I have that here. I am now presenting to Mr. Isseks a copy and will put a copy in the record.

The Court: Did you want to give that a number?

Mr. Middleton: Yes, I do.

The Court: O-6185.

Mr. Middleton: O-6185 is a tabulation of the holdings as of January 15, 1942, of corporate shares of the other corporate defendants by the officers and directors of Owens. Your Honor will observe there are only two men on the board,—no officers, only two men on the board of Owens,—who have stock in any of those companies. One of those men is Harry Collin, who is the senior member of the firm of Collin & Norton, in Toledo; and the other is Frank Nesbitt, who holds title to 36 shares distributed between Thatcher and Lynch, and Mr. Nesbitt is with the Can Company end of the Owens business.

The Court: Any objection?

Mr. Isseks: No, we have no objection.

The Court: It may be admitted.

Mr. Middleton: We were requested, if possible, to produce the license of M. J. Owens and E. D. Libbey to the

Libbey Glass Company back in 1896. We have not been able to locate that ancient document.

We were requested to produce the license covering lamp chimneys, which was mentioned as having been made by the Toledo Glass Company to the American Lamp Chimney [fol. 12019] Company, and we have that old document here, and have copy here. Do you wish that in the record?

Mr. Isseks: We don't care for it, Your Honor.

Mr. Middleton: Do you want a copy of it?

Mr. Isseks: Yes.

Mr. Middleton: We will give Mr. Isseks a copy of the instrument so the request will have been complied with. It is dated January 9, 1899, license from the Toledo Glass Company to the American Lamp Chimney Company.

The other old license requested was the one to the Rochester Tumbler Company covering tumblers and other similar ware. You wish that in the record?

Mr. Isseks: I don't know whether I do or not. I would like to look at it.

Mr. Middleton: We are now giving Mr. Isseks a copy of that document, which is dated September 1, 1897, and runs from the Toledo Glass Company to the Rochester Tumbler Company, on tumblers.

I might say, referring to the American Lamp Chimney license just mentioned, that it covered lamp chimneys, globes and other articles used in connection with artificial light, excepting bulbs for incandescent lamps, which had been given to somebody else.

The Rochester Tumbler Company license was an exclusive license on tumblers.

We were also requested to produce, if found, evidence of the manner in which M. J. Owens was financed with respect to his experimental work prior to 1903 when the company was formed, and we have not been able to find more [fol. 12020] than the general information in our records such as Mr. McNerney gave.

Mr. Isseks: We didn't ask for it.

Mr. Middleton: Well, it was on the record.

Mr. Isseks: The way it came up, they asked the witness, Mr. McNerney, the question, and we objected on the ground it was not proper evidence, and then they were asked to produce records if there were any.

Mr. Middleton: I don't care who directed us. At any rate we made a search and that is the result found.

We were requested at the time these Krey reports were introduced, the three Krey reports which are Exhibits H-5949, 5950 and 5951, to state whether or not Owens paid a part of the expense of the preparation of those reports. They were prepared in 1933. That is right, isn't it?

Mr. Isseks: That is right.

Mr. Middleton: We have investigated our records and are willing to concede that Owens asked that this investigation be made and that we paid one-half of the cost of it, sharing it with Hartford. That is as a stipulation, in lieu of testimony.

Mr. Isseks: We accept that as a stipulation.

The Court: Very well.

Mr. Middelton: We were requested, I believe, by Mr. Isseks, to give them copies of Exhibits O-6037 and O-6038, which were the Nesbitt lehr patents, and outside of court I believe that has been complied with.

Mr. Isseks: All right, anything in the way of copies, if [fol. 12021] we get them, all right; if we don't we will have them photostated from the actual exhibits.

Mr. Middleton: At page 9950 of the transcript we were asked to show the cost of the mechanical development department for the years 1920 to 1933, and at that time I expressed doubt as to our ability to do it, because of the manner in which the accounts were then kept; and our further search has verified my opinion in that respect. They cannot be broken down so we can answer that question, so we therefore cannot produce that information.

Mr. Isseks: That is all right.

Mr. Middleton: We were also requested, at record page 9957, to produce for the government's inspection, the logs concerning the stationary pot experimentation other than the one log which we had here in court. We have had the files at Alton searched continuously, and we have so far only located two of these old actual logs. I am now handing them to Mr. Isseks. I am under the impression that the actual log records, if there were any further back, must have been mislaid or thrown away with the old papers. We have a record of the search being made and all that. So far we have been able to find only two of these actual log records.

Mr. Isseks: Your Honor will recall the witness McLaughlin thought there were log records for '26, '29, '30, and thereafter. We have been handed log records in one volume

for '30—some date beginning in 1930, I think it is August, 1930,—and going to September 18, 1931. The other document has two pages relating to experiments, apparently [fol. 12022] on May 20, 1932. We would like to look at them. I doubt whether we will offer any of them. We will look at them during the luncheon recess, and if we wish to put any in we will do so.

Mr. Middleton: I will say if we succeed in finding any more, we will turn them over to the government for inspection, even though the case is finished.

Mr. Isseks: That is a very generous offer. Might I make the further request that if you find anything we would like to offer, may they go in as physical exhibits, subject to any correction you wish to make?

Mr. Middelton: I see no objection if it relates to the stationary pot.

Mr. Isseks: Only relating to stationary pot, nothing else.

Mr. Middleton: In that connection, I would like to place in the record as an exhibit, the one log to which Mr. McLaughlin referred in his testimony. It is a rather large book comprising some sixty-odd pages, with pictures and drawings attached, and it covers project #274-1, which was the experiment started in November, 1931, and that one study continued over into either '32 or '33. I think it was May, 1932.

Mr. Isseks: No objection, if it is not admitted on any issue of prior art, validity or infringement.

Mr. Middleton: It is presented to show our interest in stationary pots and the work we did on stationary pots.

[fol. 12023] The Court: What number did you give this?

The Clerk: O-6186.

The Court: O-6186 may be admitted.

Mr. Middleton: We were also requested to produce any telegrams we might find from M. J. Owens to J. C. Brady, and from Brady to Owens, concerning the Brookfield license to Owens. That request appears at record 10,002. We have not been able to find any such communications.

At record 10,007 and 10,008, we were requested to make a further search for a letter written by L. T. Williams to H. W. Carter, dated June 25, 1928. That letter was referred to in Mr. Carter's unfinished letter which is in the record as O-5999. We had made, as I then stated, an extensive search in Toledo for that letter and was unable to find it. The only other possible place to look was in Detroit,

and we have made that search, since, in the office at Detroit, and they don't have it there, so we are forced to say, Your Honor, we just can't locate a copy of that letter.

The government requested permission to look at all the directors' minutes, and they have done that since that request was made, and we have in that connection two excerpts from minutes of the executive committee.

Mr. Isseks: Mr. Apsey says there is no objection.

Mr. Middleton: We would like to have this paper identified and we will substitute a clean, unmarked paper for the record.

The Court: O-6187.

[fol. 12024] Mr. Middleton: O-6187, Your Honor, consists of excerpts of the minutes of the executive committee of Owens, dated July 26, 1924, and another meeting of January 10, 1925, and we offer these excerpts.

The Court: They may be admitted.

Mr. Middleton: They relate, in a general way, to the Headley & Thompson matter.

The complaint, Your Honor, contains an allegation on page 88, the second paragraph at the top of page 88, which we deem it necessary to comment upon and to clear the record on, and the government has very kindly consented to stipulate what we would prove in that regard.

The paragraph of the complaint says,

"Owens-Illinois Pacific Company's license agreement dated October 18, 1930, has a provision therein by which Hartford agrees not to supply a machine to any other company for the manufacture of hollow glassware in that part of the United States west of the Rocky Mountains."

Now, in our answer we have explained our position with respect to that allegation quite at length, and our answer to that paragraph begins at the bottom of page 70 of the answer and continues through to the top of page 72, and we have there stated that there was never any company named "Owens-Illinois Pacific Company", and I think that is also borne out by the Exhibit 1689, which the government introduced apparently to support their allegation of the complaint. Exhibit 1689 is an agreement bearing the date [fol. 12025] of the instrument referred to in the complaint,—October 18, 1930,—but it is not by any company of that name. That is, the company which made the agreement does not have the word "Owens" in it at all. The

agreement was made by the Illinois Pacific Coast Company. And our only point in asking the government to stipulate that our allegation in our answer is substantially true, is to clear Owens from that picture. The Owens-Illinois Pacific Coast Company was not formed until 1932, which was two years or so after that agreement, Exhibit 1689, was made; and Owens-Illinois Pacific Coast Company merely took over a then-existing company on the West Coast, which then-existing company had previously entered into the agreement which is in the record. And so we merely make that explanation to clear Owens from having made any such agreement. The present Owens Pacific Coast Company took over this agreement.

Now, if Mr. Isseks is content to have it so appear, I would like to have it stipulated that the allegations of our answer on the bottom of page 70 and page 71, are substantially true with regard to that situation.

Mr. Isseks: I will stipulate if they call a witness he will testify along the lines of the allegations beginning at the bottom of page 70 and going over to page 71. Of course, our allegation of the complaint, and Exhibit 1689, which shows assignment to the Owens-Illinois Pacific Coast Company, are still part of the record. Our position is they took over the obligations and are subject to the restrictions.

[fol. 12026] The Court: All right.

Mr. Middleton: The stipulation includes the paragraph at the bottom of page 71, which is a restatement of the fact that all these agreements were cancelled in September, 1935.

Mr. Isseks: I don't agree to that. Yesterday I was asked to stipulate as to the allegation beginning at the bottom of page 70 and on page 71, that there has never been any company, and ending with the paragraph before the word "cancelled". We say it wasn't cancelled. We say the contract continued until the present time.

[fol. 12027] Mr. Middleton: Well, I suppose that is a matter of argument. I didn't mean, Mr. Isseks, to take any advantage of you in that regard, because I thought that that was a conceded fact, that the agreement of September, 1935, which is already in this record, specifically states at any rate that it cancels all then existing agreements between Owens and Hartford and between the Pacific Coast Company and Hartford.

Mr. Isseks: Whatever the contract says.

Mr. Middleton: This agreement in the record now as 1689, which we took over in 1932, would come under the cancellation provision of the 1935 agreement. That is all I wanted the Court to have in mind—that it would fall with all the others that were canceled.

Mr. Isseks: Well, counsel is making an argument. I offered to make a stipulation yesterday that if they would call a witness he would testify to the facts beginning at the bottom of Page 70 and going up to the place just before the allegation with regard to cancellation. They told me they had a witness here, and I said I would so stipulate, but if counsel wants to read that part of the answer, I have no objection.

Mr. Middleton: This doesn't need to be copied in the record, I suppose. I will read, for Your Honor's information then.

Mr. Isseks: I have no objection to copying it in the record, Your Honor. That is what I offered to stipulate yesterday, and I am still willing to stipulate.

[fol. 12028] Mr. Middleton: Alright, I don't care whether it is in the record. Owens' Answer, Your Honor, to the allegation to which we have referred appears at the bottom of Page 70 of the Answer, and reads as follows:

"There has never been, to the knowledge of these defendants, any company to be identified as Owens-Illinois Pacific Company. Owens-Illinois Pacific Coast Company was not in existence in 1930. It came into existence as a new corporation in 1932 (having been organized at that time by Owens-Illinois Glass Company as a subsidiary to receive the assets of Illinois Pacific Coast Company, which was then purchased by Owens-Illinois Glass Company).

"Upon information and believe, these defendants aver that, in August, 1930, Illinois Pacific Coast Company, in which Owens had no interest, assigned to Hartford certain patent rights subject to a shop right of Illinois Pacific Coast Company thereunder.

"Under date of July 30, 1931, another agreement was made, under which Illinois Pacific Coast Company assigned to Hartford a certain Henry and Noble application, Serial No. 547,802, subject to a shop right of Illinois Pacific Coast Company thereunder.

"In each of said agreements, there was a limitation that Hartford would not furnish any equipment for use west of

the Rocky Mountains embodying the inventions covering the patents and applications assigned except Hartford's [fol. 12029] standard equipment.

"In May, 1932, when Owens-Illinois Glass Company organized Owens-Illinois Pacific Coast Company as above stated, the above mentioned agreements were assigned to the Owens-Illinois Pacific Coast Company.

"The limitation upon the right of Hartford to supply machines for the manufacture of hollow glass ware in that part of the United States west of the Rocky Mountains therefore arose by way of a reservation initiated by Illinois Pacific Coast Company which was, at the time the reservations were made the owner of the patent rights involved."

The Court: Anything further?

Mr. Middleton: I think I have only the Bowes stipulation. Does Your Honor care to hear it? It will take some few minutes. I would like to have it read. Does Your Honor wish to have a recess before this is taken up—it will be some ten minutes in disposing of it.

The Court: Well, I think so. I don't find that I have that copy here. When was that given me?

Mr. Middleton: Oh, I have it here. There may be an obsolete one, but this is the re-written one. We made a draft and discussed it, and this is the one on which we finally agreed.

The Court: The bailiff may recess court for twenty minutes.

(Twenty minute recess.)

[fol. 12030] The Court: Proceed.

Mr. Middleton: Mr. Wood has asked me, Your Honor, to present as Exhibit 6184 the stipulation to which reference was made this morning. It is now prepared and ready to be placed in the record, and I believe the government is satisfied with it.

Mr. Isseks: We haven't examined it, Your Honor; it is subject to correction. Mr. Wood understands that. We haven't had a chance to look at it.

The Court: 6184 may be admitted.

Mr. Middleton: I will now read, Your Honor, the stipulation with respect to Mr. Bowes' testimony. We have undertaken to boil it down into narrative form, tried to abbreviate it, and the government is content with what I am about to read, except one paragraph, to which I will call

special attention when I reach it. That is right, isn't it, Mr. Apsey?

Mr. Apsey: That is correct. Although we think it is not relevant, in order to save time we have agreed to stipulate that the witness would so testify, and one paragraph we object to its admissibility on two grounds, but we will stipulate that if the witness were here the witness would so testify, and Your Honor can rule whether it is admissible.

Mr. Middleton: Now, I understand your objection is waived as to relevancy and competency, except as to this one paragraph; that is correct, isn't it?

Mr. Isseks: Your Honor, to save time, although we do [fol. 12031] not think it is admissible, we waive that, except the paragraph which is to be mentioned later.

Mr. Middleton: (Reads stipulation as follows:)

"It is hereby stipulated, that if U. E. Bowes were permitted to testify in this case under questioning of counsel for the defendant Owens-Illinois Glass Company his testimony would be in substance as follows:

"1. Some of the results of research and development activities in modern industry, and particularly with respect to the manufacturing activities of Owens-Illinois Glass Company, are as follows:

"(a) Promotion of more rapid progress in the industry.

"(b) Acceleration of the rate of change of products and processes.

"(c) Increase in the rate of obsolescence.

"(d) Reduction in the number of uncontrolled variables in the processes of manufacture.

"(e) Reduction to a factual basis of factors formerly dependent on rule of thumb.

"(f) Altering competitive boundary lines between products performing the same or similar functions.

"2. The research and development activities of Owens-Illinois Glass Company may be divided into two general departments: one which should be referred to as the General Research Laboratory and the other the packaging Research Laboratory. In addition to these two distinct divi- [fol. 12032] sions in the research department, there is close

and continual cooperation with the mechanical research and development which is performed in the department of the Chief Engineer.

"3. In the General Research Laboratory, there is employed a group of approximately thirty trained employees, including 8 chemical engineers, 3 chemists, 2 physical chemists, 3 physicists, 3 ceramic engineers, 4 electrical engineers, and 3 mechanical engineers. This particular force has numbered from twenty-five to thirty individuals since 1935. This group of trained men concerning themselves with the study of such subjects as:

"(a) Fundamental research on physical and chemical properties of glasses.

"(b) The relation of physical properties to chemical composition.

"(c) Studies of melting and refining.

"(d) Raw material studies.

"(e) Methods of measurement of high temperatures.

"(f) Choice and behavior of refractories.

"(g) Relation of glass composition to products ultimately packaged in such glass.

"(h) Investigation of plastic materials.

"(i) Other allied subjects.

"4. One of the first and very important projects carried out by this department was the discovery of a method and perfecting a device for measuring the viscosity of molten [fol. 12033] glass. The successful operations of bottle blowing machines in the production of ware of good quality depends in a large degree upon the viscosity of the glass. There had been no procedure in the bottle industry for measuring the viscosity. This problem was solved by Mr. Bowes and his associates. At a cost of about $42,000, he experimented with and perfected an apparatus which consists of a cylindrical crucible equipped with a series of radio antenna looped around the crucible which are connected with a device on which is automatically recorded the speed at which a ball falls through molten glass contained in the cylindrical crucible."

I will say here, Your Honor, that we had intended to demonstrate that by diagrams and drawings, which we have eliminated as exhibits, in order to stipulate the evidence. "This rate of fall is converted to viscosity units by scientifically recognized computations. The accurate measurement of viscosity makes it possible to manufacture glasses of identical melting and forming properties from different combinations of batch ingredients. In other words, the character- of the batch ingredients vary with the source, and the manner in which those ingredients are combined in order to produce a definite kind of glass depends largely upon the determination of viscosity. This device perfected by Mr. Bowes and his associates therefore is of great importance to the industry. The results of [fol. 12034] his study of viscosity were fully published in the publications of the American Ceramic Society.

"5. Another important study made by the General Research Laboratory is that of the chemical durability of glasses. Certain liquids are adversely affected by even slight traces of alkali dissolved from a glass container. Certain solutions cause a deterioration of the glass in contact therewith and result in the formation of sediment. It was recognized by the research staff of Owens-Illinois Glass Company that the chemical relationship of a bottle and its contents would in certain fields at least become a matter of specification by the purchaser, and Mr. Bowes and his associates initiated a systematic research of this subject, presenting four scientific papers to the American Ceramic Society, later published in their transactions, which were available to both manufacturers and users of bottles when the trend to specification of the chemical relationship between bottles and their contents came into the industry about 1938.

"6. Many of the problems of physics and chemistry arising in the manufacture of glass containers have been studied and to some extent solved in the General Research Laboratory. The following instance is cited merely as [fol. 12035] illustrative: In bottle glass there frequently appear minute 'bubbles' which are in fact entrapped gases. At times these bubbles take the form of 'blisters' in the glass, which require the rejection of the bottles. Blisters and similar troubles are serious difficulties when encountered. In order to determine the cause of bubbles and

blisters, it is very helpful to analyze the gases which are entrapped. This involves an analysis of the contents of bubbles as small as 1/32nds of an inch in diameter. A means was discovered for analyzing these tiny pockets of entrapped gases and mechanisms were devised for measuring the gasses so entrapped. These experiments and this development cost approximately $23,000. The entire study was made available to the public.

"7. A common term in bottle manufacturing is 'melter area'. By this term is meant the area in square feet of the top surface of molten glass in a furnace. The rate of manufacturing glass in a furnace is expressed by stating the number of square feet of this furnace area required for drawing one ton of finished glass per day. For example, at one time it required approximately seventeen square feet of melter area to produce one ton of finished glass. By reason of the work done by the General Research Laboratory and the perfection of the bottle blowing machinery, the melter area per ton of production has been reduced more than 50 per cent. In other words, a ton of glass [fol. 12036] is now produced in twenty-four hours from less than half the furnace area previously required.

"8. During the past several years, Owens-Illinois and other bottle manufacturers have been subjected to constantly increasing costs of labor and material.

"9. The Packaging Research Laboratory deals with matters covering the relationship of the container and closure to its contents and includes such subjects as food technology, container processing, process equipment, closure and liner development, and technical development of new markets. In order to insure satisfactory container service, there are a number of points which need to be considered and evaluated in choosing the correct type of container for a particular product. For example, the following questions need to be answered:

"(1) Will the contents be liquid, solid, or paste?

"(2) If liquid, is it viscous or free flowing, thereby guiding partially the size of neck opening?

"(3) What is its expansion with rise of temperature as compared with water, since this has a bearing on the neces-

sary headspace to allow expansion with change of atmospheric temperature?

[fol. 12037] "(4) Is there any sort of processing of the contents of the bottle, such as sterilization, pasteurization, etc.?

"(5) If so, how much pressure is developed during such process?

"(6) Is the product such as to require hermetic seal, or is a non-sealing type of closure adequate?

"(7) What type of closure liner is necessary to permit adequate sealing?

"(8) What type of liner will be sufficiently inert chemically to the contents?

"(9) Is the product in a class where appearance is important, possibly indicating some features of distinctive appearance, or is it a low-priced commodity that requires the simplest and cheapest type of bottle and closure?

These merely illustrate the type of guidance that is desirable in recommending suitable bottles and jars for a particular purpose. In attempting to introduce glass containers to additional markets, it is necessary to investigate with extreme care all of the functional factors involved and to establish the performance factors by suitable, carefully controlled experiments. In attempting to introduce glass containers in additional fields, it is also frequently necessary to render an engineering service as to the most effective facilities to secure low-cost handling in customers' [fol. 12038] plants filling bottles or jars.

"10. This unit, that is, the Packaging Research Laboratory, employs a staff of thirty-one trained people, including 3 food technologists, 7 chemists and chemical engineers, 2 machine designers, and a variety of toolmakers, draftsmen, etc. A force of substantially this character and size was organized in 1935 and 1936 and has been continuously employed since that time.

"11. This department has continuously sought to develop new uses for glass containers. The activities of this department have resulted in development of new uses for glass containers which during the year 1941 resulted in the sale of well over 3,000 carloads of glass containers having a total wholesale price of over two million dollars.

"12. The development of these new uses for glass has increased the available market for glass containers.

"13. Many articles in glass not previously obtainable in such containers have thus been made available to the buying public, frequently in containers adapted to re-use.

"14. The General Research Laboratory, working closely with the mechanical development department, constantly studies such questions as mold temperatures, mold cooling, and mold design in order to produce bottles of the variety of shapes, sizes and weights desired by the buying public. [fol. 12039] "15. At what is known as the cold end of the lehr, many tests of bottles are made before the bottles are passed on to the buying public. The testing machinery, devices, and equipment are developed by the research department under Mr. Bowes.

"16. All of these efforts result in better products for the buying public. There is a constantly increasing demand for quality in containers. For example, twenty years ago it was common trade practice for a manufacturer to state that the breakage of his bottles on the first filling and processing would not exceed 2 per cent. Today, customers of a bottle manufacturer frequently complain if breakage in first filling and processing exceeds two-tenths of 1 percent.

"17. The life of bottles has been greatly extended through research and development. For example, the 'trip life' of milk bottles has been increased. At the same time, the weight of quart milk bottles has been decreased in the past five years from 25½ ounces, until many of them now weigh only 18 ounces, yet perform the same function as efficiently as the heavier ones formerly used."

Now, Your Honor, the next paragraph, 18, is the one which the government desires to object to so far as relevancy and competency is concerned, as I understand. They would concede, I believe, that the witness, if here, would testify as is written, but they do not concede it is admissible. [fol. 12040] We offer it, and would like to read it, if Your Honor admits it.

Mr. Apsey: Our position on that paragraph, Your Honor, is that it has an additional ground of irrelevancy to the general stipulation, which is objected to as irrelevant because it went into research and development, which Your Honor had ruled was out. But this also includes the question of competition with other products than glass, which Your Honor also ruled was irrelevant, you will re-

member, in connection with the evidence of Mr. Epstein, and we think this is not only objectionable because it takes up the time of the Court, but it is also objectionable because it is misleading and tends to inject possible issues which are not within the four corners of the complaint. So we object to Paragraph 18, and move that that be excluded.

Mr. Middleton: The same subject, Your Honor, was covered in part——

The Court: Does that apply to the next paragraph, too—19?

Mr. Middleton: Only 18.

The Court: I don't see why the Court should rule that out. The Court was of the opinion that a substantial part of what is now contained in the stipulation was not relevant or pertinent, so it may be included.

Mr. Apsey: Your Honor, this was on the additional ground. Your Honor had ruled on this, that this was ir-[fol. 12041] relevant because it was competition between glass and other products, and the other part was only irrelevant on the matter of its being research and development.

The Court: Well, if you object to this one statement going in here, I don't think it spoils the paper that is being read.

Mr. Middleton: We shall read it then, Your Honor?
The Court: Yes.

Mr. Middleton: (Reads).

"18. There is constant competition in the container field between glass on the one hand and paper, tin, and plastics on the other hand. The research laboratories function constantly to meet this competition and keep the price of glass containers on a competitive basis with other materials.

"19. In the period 1935 to 1941, there were fourteen scientific papers presented to the American Ceramic Society by bottle manufacturers. Of these, twelve were presented by Owens-Illinois.

"20. As a result of the research and development activities of Owens-Illinois, as illustrated in the foregoing, the public has been offered a greater variety of glass containers adapted to a greater variety of uses of greater durability and strength.

"21. The cost of engineering, development, and experimental work in the Packaging Research Department for the years 1930 to 1940 is as follows:
[fol. 12042]

1930	$ 28,763.07
1931	26,582.57
1932	29,249.97
1933	25,288.46
1934	33,088.33
1935	44,356.59
1936	52,086.85
1937	105,026.37
1938	133,311.61
1939	154,822.16
1940	164,755.72"

Your Honor will observe that that is only the Packaging Research alone;—doesn't cover the General Research. That explanatory comment is made so that those figures can be added to the figures which Mr. Levis presented in a tabulation in which he compared the cost of engineering and development with the royalty cost, and that is already included in that Exhibit 781. But these particular figures were not included there for the years indicated here.

(Reads.)

"These figures are not included in the cost of 'Engineering, Development and Exper. Exp.' set forth in column No. 3 of Exhibit 781 for the years 1930 to 1937, inclusive, but are included in the figures set forth in Exhibit 781 for the years 1938 to 1940, inclusive."

Now, in addition to this stipulation, we had intended to ask Mr. Bowes as to the general trend of prices resulting from research and development, and the government objected to it, and the best we can do then is to show the Court that if asked and permitted to answer, Mr. Bowes would testify as to the declining price of the commodities.

Mr. Apsey: We don't stipulate that he would so testify; neither do we stipulate that it would be admissible.

[fol. 12043] Mr. Middleton: That is right, they do not stipulate either of those facts, but we do offer that, Your Honor, as a matter of proof, that if the witness Bowes were asked and would be permitted to testify, he would so testify

as to the actual decline of prices in recent years of commodities.

[fol. 12044] Mr. Peters: Mr. Isseks requested patents on AO machines and Mr. Wood reserved Exhibit No. O-6183, so I am having marked as Exhibit O-6183-A, -B and -C, three patents covering the AO machine. I will offer them.

The Court: They may be admitted. Anything further?

Mr. Middleton: I think not.

The Court: You rest?

Mr. Middleton: Of course with the correction in the record, that has been taken care of; yes, Your Honor.

Mr. Schaefer: We are compiling some additional data that was requested when witnesses for Ball Brothers were here. That will be ready by the end of the week. We suggest two exhibit numbers be reserved for it. I assume they should be government exhibits.

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[fol. 12045] The Court: What numbers?

The Clerk: Nos. 2009 and 2010.

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The Court: All right. They may be admitted.

Mr. Apsey: In that same category there was one matter which the Glass Container Association undertook to furnish the government this week, and that was the figures [fol. 12046] covering shipments, idle capacity and total potential capacity for the years 1940 and '41, bringing their two charts down to date. I think as long as the Glass Container Association is not represented here that we should also have an exhibit number reserved for that.

The Court: That will be Exhibit 2011. Those three exhibits,—2009, 2010 and 2011 will be admitted.

Mr. Isseks: Your Honor, I assume Hazel-Atlas has rested?

Mr. Philbin: The Hazel-Atlas defendants have rested.

The Court: And Ball Brothers have rested?

Mr. Schaefer: Yes.

The Court: The other defendants have announced that they have no witnesses to offer.

Mr. Williams: There was one thing the government requested that was overlooked, Exhibit 1946 was a chart showing the production of glassware by five companies and

the remaining thirty-five companies, and we were asked to stipulate that it would not be necessary to call a witness to identify that chart, as we now do.

Mr. Isseks: I would like to offer it in evidence, Your Honor.

Mr. Williams: It is offered.

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[fol. 12047] The Court: It may be admitted so far as Owens-Illinois is concerned.

Mr. Isseks: It has figures of Owens-Illinois and four others. We are willing to delete the four others until we are able to satisfy counsel as to the source and accuracy. But we do offer it just as far as the chart shows Owens-Illinois and thirty-five others. Your Honor admits it for that purpose?

The Court: That is right. Anything further?

Mr. Isseks: The government has very short rebuttal, if all defendants have rested.

The Court: You may proceed.

[fols. 12048-12050] Rubuttal

Mr. Isseks: Mr. Lewis would like to make an offer.

The Court: Let's get everything in before we proceed with the rebuttal.

Mr. Isseks: We have a few stipulations. Do you want to put them in first?

The Court: Yes.

Mr. Lewis: Your Honor, I would like to offer in evidence a letter dated January 8, 1942, from Mr. K. E. Sommerfeld to the Department of Justice. Mr. Sommerfeld was subpoenaed to come in and was unable to come in. Therefore counsel for Hartford, Owens and Lynch, have agreed to let this go in as evidence without objection, provided, however, the government stipulates that Mr. Sommerfeld holds himself out as a manufacturer of machinery for production of wide mouth ware, and we so stipulate. That is Government's Exhibit 2012.

The Court: It may be admitted.

Mr. Lewis: We offer this letter in evidence for the purpose of showing the exact nature of the competition of the Sommerfeld Machine Company with some of the defendants

in this case and with your permission I would like to read this letter.

The Court: Proceed.

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[fol. 12051] Thereupon G. W. Batchell was called by the government, and, being first duly sworn, testified as follows, in rebuttal:

Direct examination.

By Mr. Lewis:

Q. Will you give your name and residence to the reporter, please?

[fol. 12052] A. G. W. Batchell.

Q. What is your present position?

A. President, Toledo Engineering Company.

Q. Will you tell us, briefly, what the nature of the business is of the Toledo Engineering Company?

A. Glass plant engineering and construction.

Q. Has it been in that business for some time?

A. Well, in the neighborhood of—from 1929, since we incorporated.

Q. Was it in the same business prior to 1929?

A. Same business.

Q. How far back does that go?

A. Since 1913.

Q. You have been actively connected with the concern since 1913?

A. Yes.

Q. For a period from 1920 to 1924, will you tell us, please, the activities of your company in assembling and distribution of lehrs for the annealing of glassware?

A. Well, we assembled lehrs by others manufactured during that period of time.

Q. How many lehrs did you assemble during that period of time?

A. I would saw a dozen.

Q. Those were lehrs for the annealing of glass containers?

A. Yes.

Q. Will you take the period from 1924 to 1938 and tell us what the activities of your concern were in connection with assembling and distributing lehrs?

A. During that period we did not assemble any. We ex-
[fol. 12053] perimented with one. We operated it about a month and discontinued it.

Q. When was that?

A. 1928.

Q. Was that lehr you experimented with, ever used commercially?

A. No.

Q. For the period from 1924 to 1938 you neither made nor assembled nor sold a single lehr?

A. No.

Q. For the annealing of glassware?

A. No.

Q. Take that period from 1938 to the present. Tell us what the activity of the company has been.

A. We experimented and developed a lehr in 1938 which at the present time we are making and selling in the market today.

Q. How many have you sold since 1938?

A. There has been ten sold.

Q. You sold them outright?

A. Yes.

Q. You haven't leased them or licensed them?

A. No.

Q. Do you have patents covering them?

A. Yes.

Q. When is the date of the first lehr that you sold in 1938?

A. The first one is in August, 1938.

Mr. Lewis: That will be all.

Cross-examination.

By Mr. Carlisle:

Q. Mr. Batchell, you have been advertising this new kind of lehr of yours for sometime, have you not?

[fol. 12054] A. Yes.

Q. I show you a copy of the Glass Industry dated April, 1941. That is the advertisement of your company, isn't it?

A. Yes.

Q. That is a drawing of the lehr which you are presently marketing?

A. Yes.

Q. I show you the Glass Industry for March, 1941. Is that also a representation of the lehr you are now marketing?
A. Yes, sir.
Q. And that is a lehr for annealing glass containers, isn't it?
A. Yes.
Q. Did Hartford-Empire Company ever try to stop you from making or selling that lehr?
A. No.

Mr. Carlisle: No further questions.
The Court: That will be all, Mr. Batchell.

Thereupon the government called as a witness, in rebuttal, P. L. Geer who, having been previously sworn, testified as follows:

Direct examination.

By Mr. Kramer:

Mr. Isseks: We are calling Mr. Geer. Your Honor will recall he testified before on behalf of the government. He is an executive of Amsler-Morton.

Q. Your name is P. L. Geer?
[fol. 12055] A. Yes.
Q. You are an officer of the Amsler-Morton Company?
A. Yes.
Q. You testified here previously?
A. Yes.

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Q. Has the Amsler-Morton Company ever sold, leased, licensed, rented or given away, forming machines to anyone in the United States, said forming machines having been manufactured by anyone else other than your company?
A. No.
Q. Have you ever advertised for sale forming machines for the production of glassware in the United States?
[fol. 12056] A. We have advertised in the United States, but not for the purpose of selling forming machines. The American papers—trade papers—that are produced in this country are sent to all parts of the world, and we find it is

the best medium of advertising in order to reach the people we would like to.

Q. You advertised, then, in trade papers published in this country that you were competing for customers abroad, is that right?

A. Yes.

The Court: I think that was brought out in your other testimony.

Mr. Kramer: That was with respect to lehrs.

Cross-examination.

By Mr. Goodrich:

Q. You don't mean to say there was anything in your advertisement that told any reader of it that it was directed toward foreign customers?

A. Oh, no, we couldn't do that, but we haven't attempted to sell in this country, or manufacture.

Q. I direct your attention to an advertisement which is found in the August, 1941, copy of the Glass Industry, and I show you two illustrations. One heavy duty press with a picture of a machine. Now, a press is a forming machine, isn't it?

A. That is true.

Q. Right next to it is a high speed tumbler press with a picture. That is also a forming machine?

A. That is true.

Q. We are speaking, of course, of glass containers?

A. Yes.

[fol. 12057] Q. In the upper left-hand corner is another picture labeled "High Speed Press". That also is a forming machine, isn't it?

A. Yes, sir.

Q. Fourcault, that doesn't relate to containers?

A. No. That is for drawing sheet glass.

Q. And the rolled or sheet glass, of course, doesn't pertain to containers?

A. No.

Q. Nor the two drawing machines?

A. No.

Q. The fuel oil systems, of course, could be used in furnace for container ware?

Mr. Kramer: We are dealing only with forming machines.

(Question withdrawn.)

Q. Mr. Geer, would you sell, in the United States, this high speed press which you have illustrated in the upper lefthand corner, if you got an order today?

A. Not through the Amsler-Morton Company.

Q. Through whom would you sell?

A. Through a company known as the G. M. S. Corporation.

Q. What is the G. M. S. Corporation?

A. The G. M. S. Corporation is a concern that designs and experiments with and perfects inventions, but the only thing the G. M. S. Corporation has done to date is to supply drawings and grant a license to use, to have built one experimental machine for the manufacture of tumblers. The machine has not been sold to anybody.

[fol. 12058] Q. Is that one of these illustrated on here as high-speed tumbler machines?

A. That is the one right here, the figure right here.

Q. Suppose I mark that with an "X". (Marks same.) Now, what is the "High speed press", does the G. M. S. Corporation handle that also?

A. Well, I don't think we would build the press. We might sell the drawings to somebody. We wouldn't take the responsibility of selling the machine.

Q. Why not—because of difficulties in the manufacture of it, you mean?

A. Well, we have no facilities for manufacturing. It is only an engineering company.

Q. But this is a high speed press, a forming machine, which you have designed and for which you will furnish the drawings?

A. Yes, sir.

Q. And which you, perhaps, might make through the G. M. S. Company?

A. We couldn't make it.

Q. You don't have the facilities to manufacture it, is that true?

A. That is true.

Q. I will mark that one with a "Z". Now, let's take this other one, the "Heavy Duty Presses", right next to the high speed press we marked "X". Could you fill an order

for that today, I mean leaving out of consideration priorities?

A. We could furnish the drawings but we would not fur-
[fol. 12059] nish the machines.

Q. Could you furnish it through the G. M. S. Company?

A. The drawings, yes.

Q. But you haven't the facilities for making that?

A. No.

Q. Let me mark that one "Y". Now, you said the G. M. S. Company would furnish the drawings and license and lease the machine?

A. That is providing we own the patents on the particular machine we would grant a license for.

Q. Have you put out any such machines, the G. M. S. Company?

A. No, sir.

Q. Have you actively solicited orders?

A. No, sir.

Q. No one has come to you and ordered a machine?

A. No, sir.

Q. You have refused no orders?

A. Only for experimental purposes, that one machine.

Q. But you have refused no orders for any of the machines illustrated in this advertisement?

A. We haven't received any inquiries for them.

Q. So, of course, you haven't refused them if you haven't received them?

A. No.

Q. But have you actively tried to place them in the industry?

A. Only for experimental purpose, that one machine I mentioned a while ago.

Q. As I understand it now, the G. M. S. Corporation or Company is able to furnish the drawings for these three [fol. 12060] presses we have marked "X", "Y" and "Z"?

A. That is true.

Q. And those are glass container forming machines, are they not?

A. That is true.

Mr. Goodrich: I offer from the "Glass Industry" of July, 1941, the advertisement of the Amsler-Morton Company.

The Court: What number do you give that?

Mr. Goodrich: H-6188.
Mr. Kramer: No objection, Your Honor.
The Court: It may be admitted.

Q. Now, I would like to know a little more about the G. M. S. Company, Mr. Geer. Are you individually interested in the G. M. S. Company?
A. Yes.
Q. What do the initials stand for?
A. Geer, Morton & Sloan.
Q. Mr. Morton is the Morton of the Amsler-Morton Company?
A. That is true.
Q. And who is Mr. Sloan?
A. He is an engineer.
Q. Now, there is also a press known as the "Sloan Press", is there not?
A. Mr. Sloan has been identified with other concerns. He has probably built several presses and other types of machines prior to his coming to the G. M. S. Corporation.
Q. And those were—when you say "presses"—when you and I say "presses", we are talking about forming machines for glass containers, aren't we?
[fol. 12061] A. That is true.
Q. And that is what you mean. When was the G. M. S. Company organized?
A. Oh, probably around 1938, I presume.
Q. Is the stock divided between you three gentlemen?
A. Yes.
Q. It is not publicly financed? That is all I want to know.
A. No.
Q. What was the purpose of its organization,—to go into this forming machine business?
A. No, simply to design and to experiment with and to sell licenses, principally abroad.
Q. And principally in glass machinery?
A. Yes, all kinds of glass machinery; but the idea was to grant these licenses abroad. And that has been done in a number of instances.
Q. I believe you testified you also had the idea of granting licenses in this country?
A. I wouldn't say that.
Q. You haven't solicited any?
A. No.

Q. And you haven't refused any?

A. No, but when you go out after business you usually ask people to buy.

Q. And what kind of glass forming machine was the G. M. S. to handle—formers, you have mentioned,—feeders?

A. No. We haven't sold any feeders.

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[fol. 12062] Q. The patents owned by the G. M. S. company were taken out in whose name?

A. I think principally in Mr. Sloan's name. I know I don't have any patents in this company.

Q. Any patents taken in the name of W. A. Morton?

A. Perhaps; I am not sure of that.

[fol. 12063] Q. But G. M. S. does hold patents covering forming machines?

A. True.

Q. Now, is that the same company whose assets you tried to sell to Hartford-Empire Company in 1938 for around $350,000?

A. I never tried to sell it. I don't know anything about it.

Q. You own one-third interest, or you own an interest in that company?

A. I own an interest, not one-third.

Q. You don't know whether an attempt was made to sell the G. M. S. Company to Hartford?

A. To my knowledge I don't.

Q. Well, you know the attempt had been made?

A. Oh, I don't know. In general conversation somebody may have mentioned it but I don't know anything about it myself.

Q. Who is the manager of the company, who would know about it?

A. Mr. Sloan is the manager.

Q. Are you on the board of directors?

A. Yes, sir.

Q. You are an officer of the company?

A. Yes, sir.

Q. But Mr. Sloan never reported to you any attempt to sell the assets of this company to Hartford?

A. No, sir.

Q. Has Amsler-Morton itself made any sales of the Sloan press or presses?

A. No, sir.

Q. One more question on the G. M. S. Is that company represented by Mr. Jaspert?

A. I think he took out a few patents, one or two pat-
[fol. 12064] ents,—maybe three.

Q. Well, does he do the general legal work for the company?

A. Not any more.

Q. He never told you of attempting to sell the company's assets to Hartford?

A. I don't think so. I don't remember the occurrence, anyway.

Q. Amsler-Morton Company has furnished some presses for Carr-Lowrey, has it not?

A. No, sir, not the Amsler-Morton Company?

Q. Was that the G. M. S.?

A. No, sir.

Q. Well, what company was that?

A. It was the Washington Mold & Foundry Company, I think, furnished some presses.

Q. Let me put it this way: has any company in which you are interested, sold an order of presses to Carr-Lowrey?

A. Not to my knowledge.

Q. The same question as to Macbeth-Evans Glass Company?

A. I cannot remember any such an occurrence.

Mr. Isseks: So there won't be any misunderstanding, we are going to call a witness from the Washington Mold & Foundry after this witness, who will testify to the extent to which he has made sales to anybody.

The Court: All right.

Q. Now, the Amsler-Morton made an attempt to get into the forming machine business with a suction machine, did it not?

A. Not the Amsler-Morton Company.

[fol. 12065] Q. That was the G. M. S.?

A. No, sir.

Q. What company?

A. It was another corporation entirely.

Q. What company was that?

A. The American Glass Machine Company, and was made up of glass manufacturers who tried to get around the Hartford monopoly.

Q. Are you speaking of patent monopoly or anti-trust monopoly?

A. I don't know. That is what they told me.

Q. At any rate you took out some patents, didn't you?

A. Yes, sir, Mr. Morton took out some in his name, I understand.

Q. I show you one dated September 16, 1936, three sheets, patent 2,061,367, for a forehearth structure. Do you recognize that as part of the machine?

A. Yes. I think I took out one myself, too.

Q. And here is the third page of that same patent.

A. Yes.

Q. The next is for a glass blowing machine, patent 1,928,599, ten sheets, dated September 26, 1933.

A. Yes.

Q. And the next is a glass feeder.

Mr. Kramer: I object, Your Honor.

The Witness: That is not a glass feeder.

Q. That is the feeder for that machine?

A. For the glass blowing machine.

Q. Feeding device on the machine, patent 2,059,889, of [fol. 12066] November 3, 1936. You recognize those patents as part of the machine designed by the American—what did you say it was?

A. American Glass Machine Company.

Q. Now, what interest did Amsler-Morton have in it?

A. Amsler-Morton had no interest as far as I know. I think the individuals had some; I don't remember how much now.

Q. You had some yourself?

A. I think the control was outside of Mr. Morton and myself.

Q. Mr. Sloan have some, too?

A. No.

Q. Did the G. M. S. Company have any?

A. They weren't identified or organized at that time.

Q. Just Mr. Morton and yourself?

A. Yes.

Q. What is the connection between the Amsler-Morton Company and the G. M. S. Company?

A. As I stated a few minutes ago, Mr. Morton and I are stockholders in it. Mr. Sloan was manager.

Q. And the Amsler-Morton Company itself owns no stock?

A. Not to my knowledge.

Q. And Amsler-Morton Company itself is still currently running this page advertisement for modern glass machinery?

A. That is true. The reason for that is that Amsler-Morton Company is well known and the other companies are not, and if any inquiries come in from abroad they will be turned over to the respective companies.

Q. As a matter of fact, Mr. Geer, if you got an order for [fol. 12067] a glass machine today you couldn't build it because of the condition in your shop at present?

A. We do not have a shop.

Q. Don't you make equipment, yourself?

A. We don't manufacture anything. We are primarily engineers and contractors.

A. It would be a matter of making the design, then?

A. Well, I wouldn't agree with that, because we are supplying equipment to South America right now and we have priority and export license.

Q. So so far as the designs are concerned, you could take care of them even with the war work going on in your place?

A. Yes.

Mr. Goodrich: That is all.

Redirect examination.

By Mr. Kramer:

Q. Mr. Geer, take a look at Exhibit H-6188, and I direct your attention to the machine marked "Z", "High Speed Presses". Have you sold any of those in the United States for production of glass ware in the United States?

A. No, sir.

Q. How about "Y"—"Heavy Duty Presses"—same question as to that?

A. Never sold any.

Q. "X"—"High Speed Tumbler Presses"—did you ever sell any of those in the United States?

A. We have one under experiment right now.

Q. Where is that one under experiment now?

A. In the U. S. Glass Company at the present time.

Q. Has it packed any ware yet?

[fol. 12068] A. No, sir.

Q. How about this one forming machine that is now being used for experimental purposes that was put out by the G. M. S. Corporation; has that packed any ware for commercial use?

A. No. Are you referring to that tumbler machine?

Q. Yes.

A. No, it has not made any type ware and no attempt has been made to make any.

Q. This American Glass Company—what was the exact name?

A. American Glass Machine Company.

Q. Judge Goodrich showed you a number of patents and asked you if they were not patents made by inventors and then assigned to the American Glass Machine Company. I want to ask you whether or not the inventions covered by those patents were ever embodied in any glass forming machinery that was put in commercial use in the United States.

A. No, sir.

Q. One further point. Mr. Goodrich asked you whether or not G. M. S. Corporation had ever furnished any forming machines, or offered to deliver any forming machines, or advertised any forming machines, for glass container production—or for container production I think he said.

A. You mean for bottles?

Q. As a matter of fact, you have never even advertised that kind of machine—they are all presses.

A. Mostly presses. I don't remember whether they were for containers or not. The G. M. S. Corporation does have [fol. 12069] some patents on container machines, but I know that they never accepted a contract or built a machine for that purpose in this country.

Q. In the United States?

A. Yes, sir.

Mr. Kramer: That is all.

Recross-examination.

By Mr. Goodrich:

Q. You have built in this country the machine called for by these patents I have shown you?

A. Experimentally.

Q. But it is in being, the machine has been made?

A. The machine was made but it never manufactured ware for sale.

Q. You tried to run it experimentally?

A. Yes, sir.

Q. Just so there will be no mistake, the product of these presses marked "X", "Y" and "Z", I think I asked you before, is glass containers, is it not?

A. Oh, yes.

Mr. Goodrich: That is all.

Mr. Carlisle: Before the next witness takes the stand I would like to offer as Exhibit H-6189, an excerpt from the "National Glass Budget" dated March 30, 1940, which contains an advertisement of the Sommerfeld Machine Company, as to which we raise no objection to the government's offering the first exhibit on rebuttal. I understand there is no objection.

The Court: Is there any objection to that?

Mr. Lewis: No, Your Honor, there is no objection.

The Court: It may be admitted.

[fol. 12070] Thereupon the government, further to maintain the issues on its part, called as a witness on its behalf, in rebuttal, W. M. Crile, who, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Kramer:

Q. Please state your name?

A. W. M. Crile.

Q. Where do you live, Mr. Crile?

A. Washington, Pennsylvania.

Q. Where do you work?

A. At Washington Mold Machine & Foundry Company.

Q. Are you an officer of that company?

A. General manager.

Q. How long have you been general manager?

A. Since the organization of the company in 1917.

Q. Now, the questions I am about to ask you relate only to the sale of machines in the United States, so please bear that in mind in answering. Has the Washington company ever manufactured forming machines for the production of glassware?

A. Yes, sir.

Q. Who has been your principal customer for those machines?

A. Hazel-Atlas Glass Company I believe.

Q. Under what terms did you do work for Hazel-Atlas Glass Company with respect to the building of these forming machines?

A. Time and material, I believe would be the answer to that.

Q. Cost plus basis?

A. Cost plus.

[fol. 12071] Q. In building the forming machines for other customers, did you use the patterns and drawings that you used for producing the machines for Hazel-Atlas?

A. No, sir.

Q. You did not intermingle, then, the miscellaneous customers with the Hazel-Atlas job?

A. That is right, we did not.

Q. What types of forming machines did you build for Hazel-Atlas,—were they narrow-neck or press and blow, or were they purely press?

A. Well, they were press and blow, and press.

Q. Have you ever built a narrow neck forming machine for the production of narrow neck bottles, such as liquor bottles, wine bottles, and so on?

A. No; we have rebuilt a few of them.

Q. But you have never built——

A. Never built a new one.

Q. Now, prior to 1933, did you ever build forming machines for anyone in the United States other than Hazel-Atlas, on a time and material basis?

A. No, I believe not.

Q. Now, since 1933, have you any idea approximately as to how many forming machines all told you built for use in the United States?

A. My recollection is about eleven.

Q. And how many of those would you say were for Hazel-Atlas?

A. Six.

Q. And the other five were for other customers?

[fol. 12072] A. Miscellaneous customers.

Q. So that since 1933, you have done no work whatsoever on the forming machines, except to build eleven machines?

A. That is right.

Q. And none of those eleven machines were of the narrow-neck type—no narrow neck bottles; is that right?

A. Only one of those could, and that is in the experimental stage at the present time.

Q. Is it used to make ware, or is it being used experimentally?

A. Well, I don't know.

Q. Where is that located?

A. Parkers Landing.

Q. With the Knox Glass Company?

A. Knox Glass Company.

Q. Now, have you ever rebuilt Lynch machines changing the drive into the Geneva type?

A. Yes.

Q. When did you do that work?

A. I don't remember just the year; I believe around about '37. Maybe '36, '37, '38.

Q. How many jobs of that type did you do?

A. Three of them.

Q. Are you doing it now—building them now?

A. No.

Q. Why not?

A. Well, they had an injunction put against us on the third machine, so we just quit building them.

Q. You mean that suit was filed against you for being an infringer?

[fol. 12073] A. That is right.

Q. By Hartford?

A. That is right.

Mr. Kramer: If Your Honor please, Exhibit 973 shows that the suit was filed on November 13, 1937, and the consent decree entered December 14, 1937.

Mr. Goodrich: Will you state also when the Court granted the injunction, please?

Mr. Kramer: I don't know; I am sorry.

Mr. Isseks: Consent decree.

Mr. Goodrich: The witness stated an injunction was issued, and I think this Court should know that.

Q. Now, in connection with each of these eleven forming machines that you have built and sold in the United States since 1933, and as to which none were capable of produc-

ing narrow-neck bottles, was that an outright sale, or did you license and lease the machine?

A. No, those were outright sales.

Mr. Kramer: That is all.

The Court: Cross examine.

Cross-examination.

By Mr. Carlisle:

Q. Before 1933, Mr. Crile, what was the extent of your forming machine business?

A. You mean in dollars and cents, or——

Q. Compared to the period subsequent to 1933?

A. Oh, it was quite a bit greater.

Q. It was?

A. Yes. I don't have those figures in my mind. It was [fol. 12074] quite a bit bigger, larger.

Q. You installed a 12 mold press down at Carr-Lowrey, have you not?

A. Yes, sir.

Q. Done some press work for the Macbeth Evans Company?

A. Not automatic. I made some semi-automatic stuff for them.

Q. Have you ever heard of the Daubenspeck Machine?

A. Yes.

Q. What sort of a machine is that, Mr. Crile?

A. It is a ten mold machine; I believe they make narrow necks or wide mouths, and it is—it will be fed from a feeder, the glass will be formed through vacuum,—I believe will answer that question.

Q. Have you ever, or has the Washington Mold & Foundry Company ever made any of those machines?

A. Yes, sir, we built two of them.

Q. When was that?

A. We finished one this last December, and I built one that went abroad in '36; I believe '36 is correct.

Q. Are those ever sold for consumption in the United States?

A. I cannot answer that, as we have nothing to do with it, except to build it, and Mr. Daubenspeck places the order.

Q. You build them under orders of Mr. Daubenspeck?

A. That is correct.

Q. And that is a narrow neck container machine, is it?
A. Yes, that is what it is supposed to be.
Q. And also sold as wide mouth?
A. Yes.
Q. Universal Bottle Machine?
[fol. 12075] A. That is right, a continuous operating machine.

Q. Except for the entry of the consent decree in the matter referred to in your direct examination, has the Hartford-Empire Company ever tried to prevent you from marketing any forming machines?

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The Witness: Your Honor, the only thing I could answer on that is, is the stopping of us building or rebuilding the Lynch machine to the Geneva drive.

• • • • • • •

Mr. Carlisle: You mean through the injunction?
The Witness: Yes.
Mr. Carlisle: Your Honor, I move to strike the answer—it is not responsive. I particularly excepted the effect of the injunction in my question.
The Court: Well, the answer may stand. Proceed.
Mr. Isseks: Your Honor, may I ask the witness whether he did finish his answer?
The Witness: Yes.

[fol. 12076] Q. It is your understanding, Mr. Crile, that the prevention of your rebuilding this Lynch machine was by virtue of the injunction entered into the matter just referred to? It was the injunction, in other words, that stopped you from doing that?
A. Well, I don't know whether I could interpret the law on that myself; I am not qualified on that, but that is the way I would understand it.
Q. Outside of that, has Hartford-Empire Company tried to prevent you from marketing forming machines?
A. No, sir.
Q. Now, the forming machines that you were making for Hazel-Atlas were largely press and press and blow machines?
A. That is right.

Q. Wide mouth machines and semi-wide mouth machines?
A. Yes, sir.
Q. Now, was it your understanding that the consent decree and the injunction had anything to do with wide mouth or semi-wide mouth machines of that nature?
A. None at all.

Mr. Carlisle: That is all.
Mr. Philbin: May I ask a very few questions, Your Honor, with respect to these machines that were made by Mr. Crile's company?

Cross-examination.

By Mr. Philbin:

Q. I understand that you have made some machines for the Hazel-Atlas Company on a cost-plus basis. That is, you are paid for your labor and you are paid for your ma-
[fol. 12077] terial, and that you also have made some machines for other companies. Who designed the machines which you made for Hazel-Atlas? That is, were they designed by people in your organization, or were they designed by Hazel-Atlas?
A. They were designed by Hazel-Atlas.

Mr. Philbin: That is all.
Mr. Carlisle: Your Honor, may I ask one more question.

Q. Mr. Crile, you hold yourself out to the trade as being —specializing in glass house machinery, isn't that right?
A. That is right.

Mr. Carlisle: That is all.
The Court: Do you have any questions on redirect examination?
Mr. Kramer: Just three, Your Honor.

Re-direct examination.

By Mr. Kramer:

Q. The first is as to the Daubenspeck machine which counsel for Hartford asked you about—that is included in the total sum of eleven machines that you have made since 1933; is that right?
A. That is correct.

Q. With respect to the machines sold prior to 1933, all were sold to Hazel-Atlas, is that right?

A. That is correct.

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[fol. 12078] Thereupon the government, further to maintain the issues upon its part, called as a witness in its behalf in rebuttal, Victor J. Green, who, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Lewis:

Q. Will you give your name and residence to the reporter, Mr. Green?

A. Victor J. Green, 216 Shady Avenue, Pittsburgh.

Q. Mr. Green, what is your present position?

A. President and General Manager of the Swissvale Glass Machinery Corporation.

Q. And you have been president and general manager of the Swissvale Glass Machinery Corporation for how long?

A. For the past—since 1925.

Q. Will you tell us very briefly what the business is of that concern?

A. We manufacture machines for fabricating narrow and wide mouth bottles, pressed ware, paste mold articles, toy marbles.

Q. Now, did you sell those machines?

A. Yes, sir.

Q. That you fabricated?

A. Yes.

[fol. 12079] Q. And where did you sell them; in the United States, abroad, or where?

A. In the United States, in Latin America, and all the various foreign countries.

Q. What percentage of your business is foreign, and what percentage domestic?

A. I estimate about 40 percent is foreign, and the balance domestic.

Q. Now, have you recently made a compilation of all the forming machines which you have sold in the United States since 1924?

A. I have.

Q. And how did you make up that compilation?

A. Why, that's a representation of our sales and actual orders during that period, from 1924 to '41.

Q. Well, did you make that compilation up from your own books and records?

A. That is right. It is a reproduction of our sales record.

Q. I show you, Mr. Green, Government's Exhibit 2013, which is dated December 19, 1941, and ask you whether that is the compilation that you just testified you made up yourself?

A. Yes, sir.

Mr. Lewis: I would like to offer this in evidence, Your Honor.

Mr. Goodrich: No objection.

The Court: Admitted.

Mr. Lewis: This, Your Honor, is simply a list of the machines that Mr. Green has sold, or rather, Mr. Greene's [fol. 12080] company has sold, from 1924 to date, and I would like to ask just one or two questions about this exhibit.

Q. In the left hand corner, Mr. Green, appear the letters "O.R.D."—what is that?

A. That is the designation or order number.

Q. And "Model"?

A. Model identifies the machine sold.

Q. And "Customer and Address"?

A. Well, that is the purchaser.

Q. And "For making"?

A. Well, that is the articles that the machines were sold for.

Q. The machines were designed to make, you mean?

A. Were sold for producing those articles.

Q. Have you at any time since 1924 ever sold a machine in the United States for the making of narrow neck or narrow mouth ware?

A. No, sir.

Q. Have you at any time, or has your company ever done so?

A. We sold some machines to the Amsler-Morton Company, which were subsequently shipped to Manila.

Q. I show you a photograph of what appears to be a Model DEC Machine, and ask you whether that is a representation—you have a copy of it?

A. Yes.

Q. I will ask you if that is a representation of a machine that you sold at one time or another?

A. Yes.

Q. Can you tell us when that machine was first—when the model of that machine was first made?

[fol. 12081] A. Some time during 1923 or the early part of '24.

Q. And is this model which I just showed you and which I will shortly have marked as Government Exhibit 2014, substantially the same in design and construction as the machine was when it was first put out?

A. Yes, sir, with the exception of a few slight modifications.

Mr. Lewis: I would like to offer this in evidence, Your Honor.

Mr. Goodrich: No objection.

The Court: It may be admitted.

Mr. Lewis: I am sorry I don't have enough copies, Your Honor, to distribute.

This is a Model DEC Machine, heavy duty automatic glass insulator press. I offer only the photograph, Your Honor; I don't offer the advertising material on the back.

Mr. Goodrich: Oh, let's put that in, too; tells what the machine will do—tells about it.

Mr. Isseks: No objection.

The Court: Admitted.

Q. Now, I show you a Model HBB Machine entitled "Heavy Duty Pneumatic Automatic Blow Table", and ask you if that is a representation of a machine which you have sold at some time?

A. Yes.

Q. And is this a photograph of the machine as it is today?

A. Yes, sir.

Q. When was the original model of this machine first put out?

A. About 1918.

Q. Is this substantially the same as the original model was in 1918, in construction and design?

[fol. 12082] A. Yes, sir.

Mr. Lewis: I offer that in evidence, Your Honor, as Government Exhibit 2015.

Q. Now, I show you a machine——

Mr. Goodrich: Excuse me just a moment—may I ask the purpose of offering this one? I think this is a semi-automatic machine; I am not sure this is a former.

Mr. Lewis: Your Honor, Government Exhibit 2013 showed the total amount of sales made by Mr. Green's company since 1924. The purpose of these pictures is simply to show the types of machines that his company has sold since that date. In other words, it simply identifies the machines that his company has put on the market, shows what they are, and shows what they are used for.

Mr. Goodrich: No objection. Can you put them all in at once?

Mr. Lewis: Well, I will put them all in at once if you will stipulate that each one of these machines was put out at the date that the witness can testify by running through them all, and that they are substantially the same today as they were at the time they were put out.

Mr. Goodrich: Sure.

Mr. Lewis: The same as in 2013.

Mr. Goodrich: Yes, I will sipulate.

The Court: Alright, what is the exhibit number?

The Clerk: 2015 is the last exhibit.

Mr. Goodrich: Will you put those all in a book?

Q. I show you Exhibit 2016, a Model RAB Machine; when was that put out?

[fol. 12083] A. That was put out in 1919.

Q. And Exhibit 2017, which is a Model FAC Machine—when was that put out?

A. About 1916.

Q. And the 929-41 Model HFA Machine, when was that put out?

A. 1919.

Mr. Isseks: Model FAC is Exhibit 2017, and the last one referred to—929-41, is Exhibit 2018.

Q. And combination machine, Model PCE and Model PCF—when was that put out?

A. In 1924.

Mr. Isseks: That is Exhibit 2019.

Q. And heavy duty Model DAC and DAF Machine; when was that put out?

A. 1914.

Mr. Isseks: No. 2020.

Q. And Model DGA Machine?
A. 1928.

Mr. Isseks: That is No. 2021.

Q. When was the YBA?
A. 1917.

Mr. Isseks: YBA Machine is marked 2022.

Q. And the Model PCG Machine, when was that put out?
A. 1918.

Mr. Isseks: That is marked 2023.

Q. And the Model AGL Machine?
A. 1930.

Mr. Isseks: Marked 2024.

Q. And the Model AGP and AGO Machine?
[fol. 12084] A. 1936.

Mr. Isseks: Marked 2025.

Q. And Model AAL Machine; when was that put out?
A. In about 1913.

Mr. Isseks: Marked Exhibit 2026.

Q. And the Model DGC?
A. 1937 and '38.

Mr. Isseks: That is marked Exhibit 2027.

Q. Was the Model DGC Machine an adaptation of an earlier model?
A. That is right.
Q. And when was that earlier model—when was that earlier model first put out?
A. About 1935.

Mr. Isseks: The Model DGC is offered as 2027, Your Honor.

Q. Now, I show you Model AGR Machine, Government Exhibit 2028. When was that first put out?
A. In 1938.
Q. And finally, the Model A Machine; when was that first put out?
A. In 1936.

Mr. Isseks: Exhibit 2029.

Q. And was that an adaptation of an earlier machine?
A. Yes, in a way, although it is a new model.
Q. But is it substantially similar in construction and design to the earlier model?
A. That is right.
Q. And when was that earlier model put out?
A. That earlier model was out about 1914.

The Court: I think we may suspend at that point. The bailiff may recess court until 2 o'clock this afternoon.

(Noon recess.)

[fol. 12085] (At 2 o'clock p. m. Wednesday, January 21, 1942, the trial was resumed.)

The Court: Proceed.
Mr. Lewis: Your Honor, I would like to offer in evidence Government's Exhibits 2014 to 2029.
Mr. Goodrich: No objection.
The Court: They may be admitted.

By Mr. Lewis:

Q. Mr. Green, I direct your attention to Exhibit 2013, at the bottom of page 5 and the top of page 6. That showed that you sold the pressed ware machine and the narrow-neck machine to the Amsler-Morton Company in 1936. Now, I ask you how those machines were packed when they were shipped, after sale?
A. Being for export, they were packed according to standard specifications on all export shipments.
Q. And where were those machines consigned to?
A. The ultimate destination was Manila.
Q. Now, with the exception of this narrow-neck machine which you sold to Amsler-Morton, did you ever sell a single narrow-neck machine in the United States?
A. No, sir.
Q. I show you Government Exhibit 2017 and ask you whether this is the narrow-neck machine which you sold to Amsler-Morton.
A. That is right.
Q. I would like to show you Exhibit 2029 now, and I ask you whether this is a single-mold press machine?
A. It is.

[fol. 12086] Q. And in what kind of a plant is that single mold press machine used?

A. They are usually purchased by hand-operated plants.

Q. Can it be used with the automatic feeder?

A. No, definitely.

Q. Has it ever been used?

A. No, it is not usable.

Q. You say it is not adaptable at all for use with an automatic feeder?

A. That is right.

Mr. Lewis: That is all.

The Court: Cross-examine.

Cross-examination.

By Mr. Goodrich:

Q. How many hand-operated plants are there in the country today where that machine has a possible market?

A. Oh, I imagine that there is probably twenty-five or thirty.

Q. Producing to such an extent that they can use machines of that sort?

A. That is right.

Q. Now, Mr. Green, the specifications and advertising and statements about the performance of the machines that you have put on the back of these pictures are correct and accurate so far as you can make them, are they?

A. That is right, yes.

Q. And the machines will make the wares that you have illustrated from place to place?

A. As illustrated.

Q. I notice some of these pictures—here is one, July, [fol. 12087] 1940—here is another, 1926—1928—1940—1938 are these from your current catalog?

A. That is right, they are active.

Q. These are your active machines that you have for sale today to anyone who wants to buy them?

A. That is right.

Q. How big is the forming machine market in this country, do you know about how many machines a year?

A. Well, I would say that there is in our particular line probably 35 or 40 machines a year.

Q. From your list it seems apparent you are getting your share of them, aren't you?

A. It looks that way, although not lately.

Q. How do you sell your stuff, do you have salesmen on the road or do you advertise in the trade papers or send out your catalog?

A. The customary procedure is to circularize the trade, and if anybody is interested call upon them, and we periodically have a salesman call upon the various plants.

Q. And you are doing that today?

A. Not right at this time.

Q. Now, one question on a narrow-neck machine. I notice the MA model sold to Hazel-Atlas on this list, Exhibit 2013, in 1925. I don't believe that MA was pictured in the exhibits put in. Do you remember that sale?

A. Yes, sir.

Q. That is a narrow-neck bottle machine, isn't it?

A. Yes.

Q. Is that the machine that you sold to Hazel-Atlas?

[fol. 12088] (Handing picture to witness.)

A. That is a reproduction.

Mr. Middleton: What exhibit number?

Mr. Goodrich: It has not any yet.

Q. And this picture of the ware along the bottom, that is a representative line of ware those machines will make, is that correct?

A. Correct.

Q. For making small narrow and semi-wide mouth bottles such as medicals, inks, vas-lines, etc., up to 7½ inches high?

A. That is correct.

Q. "The fastest practical machine on the market", so the circular says.

A. That is right.

Mr. Goodrich: I offer that in evidence as Exhibit H-6190.

Mr. Lewis: No objection.

The Court: It may be admitted.

Q. You have never been known as a narrow-neck house, have you, Mr. Green?

A. No, we haven't.

Q. Your field has always been the semi-wide and wide mouth ware, for the most part?

A. Pressed ware, and so forth.

Q. Now, there was some comment made about the time these machines were brought out and the time improvements were made on them. I think the first one was Exhibit 2014, which is the automatic glass insulator press.

A. That is correct.

[fol. 12089] Q. I believe you stated that had been brought out in 1923?

A. Between 1923 and '24.

Q. And very few improvements on it since?

A. Quite a number of improvements on the subsequent machines. The first machine that was built, in '23 and '24, was more or less of an experiment.

Q. And this was that experimental machine?

A. This is an adaptation.

Q. So you have settled down with improvements on this machine and now have a successful insulator machine, is that right?

A. That is right. Different features were improved.

Q. Has there been any change in insulators themselves that would require the replacement of this machine?

A. Well, there is not very much demand for the machine at the present time, due to the fact that porcelain insulators supplanted the glass type.

Q. But so far as the glass insulators are concerned, this will make them as well as any of them?

A. Yes, that is quite right.

Q. So with the marble machine; there has not been much change in marbles, has there?

A. No, only modifications of the design to satisfy different individual requirements.

Q. And your machine has been improved to meet those changes

A. Quite so.

Q. Now, here is your PCE machine on Exhibit 2019. I take it this is a true picture of representative lines of ware that will make?

A. Yes.

[fol. 12090] Q. You show a milk bottle in there, do you not?

A. That is right.

Q. And an olive bottle?

A. That is right.

Q. And some sort of canning jar or preserve jar?

A. Packers' ware.

Q. Packers' ware generally. And below you have some kitchen and table ware, do you not?

A. Yes.

Q. And that machine has been improved since you brought it out, has it?

A. This is a combination press and blow machine. For instance, this machine will make a general line of wide and semi-wide mouth bottles and also small pressed articles that do not require very much power to press them.

Mr. Lewis: I don't think Mr. Green has answered your question.

(Previous question read:

"And that machine has been improved since you brought it out, has it?")

Mr. Goodrich: I think he is explaining that. I am perfectly content with his answer. If you don't like it I will ask you a question to fit his answer.

Q. Go ahead.

A. As I say, this is a modification of this particular machine here. This is a combination machine, and with the blank and blow molds mounted on the same table; and the other one is especially for pressed articles.

Q. In other words, both of the machines illustrated in Ex- [fol. 12091] hibit 2019 have a special job to do?

A. That is correct.

Q. And they do it satisfactory to your customers, do they?

A. Apparently.

Q. And on the inside I notice quite an amount of miscellaneous table ware and kitchen ware, and glass living room ware that this machine PCE will turn out?

A. Yes.

Q. And you have made improvements on those machines since you brought them along, have you?

A. From time to time.

Q. Now, here is another press and blow machine, I guess, on Exhibit 2020, a model D. A. C., and that is a correct representation of what that machine will make, is it?

Q. Packers' Ware. Can you make a milk on that machine?

A. Yes.

Q. That will make a milk bottle, too, will it?

A. Yes.

Q. Then 2022 is a semi-automatic paste mold machine with automatic take-out, and on the back of that paste mold ware adaptable for this machine,—lamp chimneys, vases, drinking tumblers,—and what are these, gas lights?

A. Yes, sir, gas lights.

Q. That is this thing?

A. That is a thermos bottle insert.

Q. And all those things, your machine will make?

A. Yes.

Q. And those machines we are talking about that you turn [fol. 12092] out as illustrated on these folders from your catalog, with the exception of the one Mr. Lewis called to your attention, are automatic machines, are they not?

A. Either semi-automatic or fully automatic.

Q. What about this last one we are talking about, this paste mold machine?

A. Well, that is a semi-automatic.

Q. What about this combination machine on Exhibit 2019, the PCE?

A. That can be worked automatic.

Q. And when you use the term "automatic" do you mean it can be fed with the feeder so that the whole process is automatic?

A. Yes.

Q. Let's go to Exhibit 2026, your Model AAL, what kind of machine is that?

A. This is a semi-automatic press for making the general line of pressed ware.

Q. It makes a general line of plates, saucers, glasses, cups, pitchers, and refrigerator ware?

A. Yes.

Q. Is that a glass brick on there?

A. That is a glass brick.

Q. Like this one? (Indicating physical exhibit in court room.)

A. Well, I presume so.

Q. Well, I mean that is what you mean by "glass brick"?

A. That is what I mean.

Q. And that is a semi-automatic machine?

[fol. 12093] A. Yes, sir.

Q. Now, you say on Exhibit 2017, your SAC heavy-duty pneumatic machine, that is a picture of the ware that can be

successfully made and it starts with ink bottles up to quart—looks like liquor bottles and prescription bottles.

A. Those are beers.

Q. And prescription ware?

A. General pharmaceutical line.

Q. Prescription and proprietary?

A. Yes.

Q. And pharmaceutical?

A. Yes.

Q. And packers' bottles, such as catsups and vinegar?

A. Yes, anything that comes in the scope of a narrow-neck article or a semi-wide mouth article.

Q. This is a press and blow machine?

A. No, the finish is formed by suction and the contour of the bottle is blown.

Q. And that is automatic?

A. It is semi-automatic. Part of the operations are automatic; take, for instance, the delivery of the glass to the mold is taken care of by what is known as a gatherer, and he drops the glass into the mold.

Q. And the machine will turn out this general line of narrow-neck ware?

A. Yes.

Q. And after the machine is fed by the gatherer, all the rest of the operation is automatic?

[fol. 12094] A. With the exception of transferring the blank to the blow mold and removing the finished part.

Q. You don't have any take-out device on it?

A. No.

Q. And this machine has been improved from time to time, has it not, since you brought it out?

A. Yes.

Q. That is true of all your machines?

A. We are constantly improving.

Q. You made some presses for the General Electric, did you not?

A. That is right.

Q. When was that, do you remember?

A. I think it was in '36 and '37.

Q. And made some for McKee?

A. Yes, sir.

Q. When was that, do you remember?

A. Oh, we have been making them for McKee over the period of the last ten years.

Q. Where you say on the back of these pictures, "Fully automatic", you mean the machines are fed by automatic means and the forming process is carried out by automatic means, is that right?

A. Yes. What we are trying to convey to the purchaser is if the feeder, or if the machine is used in conjunction with an automatic feeder, the operations are entirely automatic, providing they have the auxiliary parts on for transferring and taking out the finished piece.

Q. How many of these machines that you make are in- [fol. 12095] capable of being made to work with a feeder, roughly?

Mr. Lewis: You mean an automatic feeder?

Mr. Goodrich: Yes.

A. You mean on this particular list here?

Q. These that you have put in. Are they any here that could not be hooked up to a feeder and made fully automatic?

A. Yes.

Q. Would you like to look at them?

A. Yes, I can pick them out. Those are not adaptable for use with automatic feeder (handing to counsel).

Q. Those are the machines illustrated on Exhibits 2015, 2017, 2018, 2022 and 2029?

A. This second machine on this page is not adaptable.

Q. All right, let's catch that one. This is Exhibit 2020, and the machine is called "Heavy Duty Model DAF" on the inside page, that is not adaptable for feeder operation?

A. Yes. And likewise this one.

Q. Likewise the machine on the inside of 2026?

A. The others are.

Q. And you can back them up to a feeder and go ahead. You are selling all the machines, I mean you are actively selling machines now, aren't you?

A. Yes, sir.

Q. I mean building them and making them?

A. Yes.

Mr. Goodrich: It was my understanding this morning that Your Honor received these exhibits in toto?

[fol. 12096] The Court: No limitations asked and none given.

Mr. Goodrich: I thank you.

The Witness: May I correct my statement there?

Mr. Goodrich: Yes, indeed.

The Witness: When I say those machines are not adapted for use with automatic feeder, I mean practical adaptation; that is to say, they can be used but not recommended. We never recommend a machine mounting less than five molds for use with automatic feeder, because it is impractical from a manufacturing standpoint. That is what I base my answer on.

Q. I am glad to have that understood. The feeder is too fast for the machine, is that it?—with the few molds.

A. Well, no, the feeder can be synchronized to operate with the machine, but there is not sufficient molds on them. You cannot get your radiation and cooling facilities, and so forth.

Q. You might as well tell the customer that in advance as to have him dissatisfied, himself?

A. Unless you want to fool him.

Mr. Goodrich: Nothing further.

Redirect examination.

By Mr. Lewis:

Q. You said, Mr. Green, you do make improvements on your machines from time to time, in answer to Judge Goodrich's questions?

A. Yes, sir.

Q. Now, isn't it a fact in most of the cases of improvements, the improvements refer to the parts, the metal parts [fol. 12097] of the machine, for example the substitution of aluminum for iron?

A. That is correct.

Q. And when you answered Judge Goodrich's question in connection with improvements, you had in mind simply that kind of improvements?

A. Yes, minor improvements. The one machine there, in particular, which is shown on circular D-141. Now, that is a motor-driven Geneva movement press, and we have made the Geneva casting, we have substituted a special aluminum alloy casting for that to lessen the weight; also the table is made of aluminum instead of cast iron. That was to increase the production speed.

Mr. Goodrich: Keeps them up to date?

The Witness: That is right.

[fol. 12098] Q. Now, in Exhibits 2014 to 2029 there appears a date in the left hand corner of those various exhibits. What significance has this date?

A. Well, the chances are that was the date of the making of that particular illustration, and the printing of the circular.

Q. Well, that date has nothing to do with the time that the machine was first put out?

A. No, we built a machine with that construction involved in it, I think in around 1918, and that circular I assume is dated a number of years later.

Q. Now, Judge Goodrich asked you about this MA Machine for the making of narrow mouth bottles, which you sold to Hazel-Atlas in 1925, as appears on Page 2 of Government Exhibit 2013. Now, can you tell me whether you in fact made any other machines for Hazel-Atlas than that?

A. Can I say a word to clarify the record?

Q. Yes.

A. The machine was sold to William J. Miller, and subsequently shipped to the Hazel-Atlas Glass Company. After Mr. Miller disposed of his business, he had a contract with the Hazel-Atlas Glass Company to furnish a number of those different forming machines, which were then in the course of construction, and when I took over that business, those patents, the right to build that machine was excluded. Therefore, I didn't do business direct with the Hazel-Atlas; it was through William H. Miller personally.

Q. Then Hartford took over those patents that you are [fol. 12099] referring to?

A. No, Mr. Miller retained those.

Q. And you received some authority to finish that order?

A. I had his authority to complete the order and ship the machines to the Hazel-Atlas Glass.

Q. Well, then would it be correct to say that you never made any more of the machines of that type, because they were covered by patents?

A. We never made any more than that particular one.

Q. For that reason?

A. For that reason.

Q. Now, Judge Goodrich asked you about Exhibit 2019. Have you made any improvements on the machine, Exhibit 2019?

A. Yes, there is an aluminum table on this, and an aluminum Geneva drive.

Q. And those are the only two improvements that you have made?

A. That is correct.

Q. And the model came out in what year, did you say —'24?

A. That is right.

Q. Can you tell us what the improvements were on Exhibit 2012, the heavy duty Model DAC?

A. Well, the construction was substantially made heavier —table, base, columns, and so forth.

Q. But otherwise——

A. Here is the original machine, and this is an adaptation, or a subsequent design.

Q. When you say "here", you are referring to the machine on the back of the exhibit?

[fol. 12100] A. On the rear.

Q. But besides making the parts of the machine heavier, the machine is substantially the same now as it was in 1914; is that right.

A. Correct.

Mr. Goodrich: Ask him about the same number of molds on there, will you please?

Q. Are there any more molds on the machine now than there were in 1914?

A. The one on the rear was built for three blank and three blow molds, and this one can be operated with eight blank and eight blow molds.

Q. Exhibit 2022, Model YBA Machine—have you made any improvements on that machine?

A. Yes. This feature here, this automatic take-out appliance.

Q. Now, besides that automatic take-out appliance, have you made any other improvements on this machine?

J. Just the substitution of different material.

Q. Aluminum instead of cast iron?

A. Aluminum and cast steel, perhaps, for cast iron, and bronze for brass.

Q. But the design—otherwise the design and construction is still the same?

A. Fundamentally the same as the original, with the exception of the auxiliary appliance, which we term a take-out device.

Mr. Lewis: That is all.

The Court: Anything on re-cross examination?

[fol. 12101] Re-cross examination.

By Mr. Goodrich:

Q. You don't change models every year in the glass machinery business as you do in the radio business, do you, or some other businesses?

A. No.

Q. If you get a model that will work, then what do you try to do?

A. Well, we assume a satisfied attitude if it works successfully, but, of course, we have an engineer going around from time to time, and accepting the customer's suggestion relative to this or that, and if we can get together and consider it a practical improvement, the chances are we incorporate it in the next machine.

Q. Isn't it a fact that you watch your customers, talk with your customers, watch the performance of your machines, and then do everything you can by means of new devices or improved materials or improvements of any sort to make your machines perform more satisfactorily?

A. That is right.

Mr. Goodrich: I think that is all.

Mr. Lewis: That is all, Your Honor.

Mr. Isseks: Your Honor, we have no further rebuttal testimony. There are a few documents, however, that we would like to put in, which I think will take five minutes.

Mr. Kramer: Less than that. I have had marked during the recess substituted Exhibits 1552 to 1554, inclusive, and 1557 to 1566, inclusive. Those documents cover stipulations entered into between the United States on the one hand, and various of the defendants on the other, with respect to the genuineness of documents, or with respect to [fol. 12102] the fact that documents in evidence were found in the files of the defendants. The numbers 1555 and 1556 are those which have been reserved for Hartford's stipu-

lation, and it is understood and agreed that we will work that out after today, and simply hand it to the Clerk.

One other very minor matter, Your Honor. When Exhibit H-5803 was introduced in evidence by counsel for Hartford, the government—that exhibit, by the way, was an analysis of financial condition and profits of Hartford-Fairmont Company and Hartford-Empire Company from the beginning until 1937. When that was introduced or offered, the government said that it had no objection, but that it desired that that exhibit be brought up to date, that is, for the years 1938 and 1939. No data is available for 1940 or '41. Hartford at that time said that they would be glad to take care of the matter, and we simply wanted to save our rights, and I suggest when that comes in from Hartford—they tell me it will—that it be marked H-5803-A.

Mr. Goodrich: We agree with everything you say, and I will hand you the paper right now. Mr. Kramer spoke to me about it this morning, and I got it this noon, and here she is, and I agree with the suggestion that it be marked 5803-A.

The Court: 5803-A will be admitted.

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[fol. 12103] Mr. Isseks:

Your Honor will recall this morning counsel for Owens handed us a file of logs in connection with certain work done on the stationary pot. We took the files in during the lunch hour and selected two letters from the rather voluminous file, which we would like to offer in evidence. One is a memorandum dated January 26, 1931, written by Mr. Soubier, and addressed to various gentlemen including—[fol. 12104] starting with Mr. Bernard—I shall omit the rest of them—and I would like to offer it as the next exhibit. I won't read it.

The Court: What is the number?

The Clerk: 2030.

The Court: It will be admitted.

Mr. Middleton: May we ask that Mr. Isseks state the purpose of presenting these two letters?

Mr. Isseks: The purpose is to show that the work at that time in 1931 was experimental, as indicated by the two documents. The whole file shows that, but I am only

picking out these two documents, one at the beginning and one at the end.

Mr. Middleton: And as to that, we have no disposition to dispute that it was experimental at that time.

The Court: It may be admitted.

Mr. Isseks: I offer as the next government Exhibit 2031, a letter, or rather memorandum, dated September 18, 1931, written by J. E. McLaughlin, to Mr. F. Flexon, with copies to others.

Your Honor, we have no further proof, but Mr. Apsey would like to call something to Your Honor's attention before the government rests in rebuttal.

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[fols. 12105-12320] The Court: 2031 is admitted. The briefs that you refer to, I will have to check that to determine that matter, and you will not be prejudiced by resting.

Anything further?

Mr. Wall: No, we haven't anything further.

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[fol. 12321] Transcript of Post-Trial Proceedings

ARGUMENTS ON MOTION TO DISMISS

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The Court: I have in mind the communication dated February 9, 1933, from Frederick G. Smith to T. C. Werbe, in which some statement was made by Mr. Smith to Mr. Werbe to the effect that, You better consider the matter of getting together, so as to be on top of our competitors. Now, do you think that was some advance notice prior to August 23, 1933, to Mr. Werbe that something was in the wind?

Mr. Fess: I think Your Honor -as the date incorrect.

The Court: No; February 9, 1933.

Mr. Fess: I have no record of any such exhibit.

Mr. Kramer: That is Exhibit 1002.

The Court: 1002?

Mr. Kramer: Yes, Your Honor.

The Court: I have studied over that matter from the time of the receipt of that communication to the time of the Levis conference in May of 1933, at which time I believe, fol-

lowing which Mr. Werbe in the record says that there is something in the wind, or words to that effect, and then a [fol. 12322] short time later referred in a communication which is in the record after a meeting had East, possibly thirty days before August 23rd, to the "Connecticut Chiselers". Now, what does counsel say as to whether or not those items in the record may have been reasonable ground for Mr. Werbe to believe, speaking in the baseball vernacular, that the signal had been flashed for the squeeze play?

Mr. Fess: Well, of course it is a little difficult to interpret what Mr. Werbe may have meant by the phrase.

The Court: I am asking you what you have to say about that. What do you think he meant by it?

Mr. Fess: My interpretation of it is, Your Honor, that that letter was written, I think on April 4, 1933; it just had been following the bank crisis; there had been a change of administration down in Washington, and there were a number of things in the air. One of the most important in the glass industry was that beer was coming back. The evidence does show that following that letter, within a very short time thereafter,—the letter indicated they were going up to discuss the purchase of machines. Lynch did sell Owens six forming machines, which was quite a substantial order, after the depression of 1932.

The Court: Well, you were speaking about—on the law on the question to the effect that in order to be charged as a co-conspirator, or to become a member of a conspiracy, one must have known that a conspiracy was in the wind, or have had some advance knowledge that he was about to enter a conspiracy. Now, assuming for the sake of argu- [fol. 12323] ment that a conspiracy existed. I am asking whether or not these declarations of Mr. Werbe, two of them, and the receipt of a communication by Mr. Werbe, all in the record, do not in your opinion give some evidence that Mr. Werbe knew or had advance knowledge that he was about to enter into a proposition that may contain some possibilities.

Mr. Fess: I think I can explain it to Your Honor. This letter we are referring to of Mr. Smith was back in '31. Now, of course, we must appreciate that now there is before the Court evidence of a good many things that were going on between, we will say, Hartford and other people.

The Court: What I am relying on is the statement of Mr. Werbe himself.

Mr. Fess: You referred originally to the letter of February 3rd.

The Court: From Smith to Werbe.

Mr. Fess: In which he asked for a conference, at which it developed there was some discussion about a possible joint effort in connection with a determination, or some suggestion of possibly getting together about utilizing and combining their ideas.

The Court: Well, I am referring chiefly to language of this kind: "That such a conference might readily lead to an alignment which would not only favor the continuance of the friendly relations existing between your company and [fol. 12324] our company, but that a position might be created which would more fully protect us both against outside competition."

Mr. Fess: Your Honor, that was in 1931.

The Court: That was in February, '31; that is correct.

Mr. Fess: Now, I don't recall the exact details, but I think possibly there was a conference, the evidence shows, some time in May or June, 1931, at which nothing whatsoever materialized.

The Court: That was about the time, the record discloses, that the Hartford Company through its officers first began to display an interest in the Lynch Corporation, that some time that might be brought about with or through the Lynch Corporation. That is my memory of the record.

Mr. Fess: Well, may I refresh Your Honor further as to the record, that following that letter of February, 1931, in May, '31, Lynch representatives sought a conference with Whitall-Tatum. I think they met in Philadelphia, where they tried to settle this patent controversy, and Lynch went so far as to offer them $50,000 for the patents, in order to settle it, and they were summarily declined, as Mr. Werbe said on the stand, he had been insulted by the attorney. Following that there was a report made. Of course, Lynch didn't know anything about it or Whitall-Tatum, about the conference, and a conference was arranged some time I think in June of 1933 when there was some further talk, but nothing materialized from it at all; [fol. 12325] Lynch went ahead with his patent suit.

The Court: Wasn't there an interruption in '32 by way of a victory upon the part of Lynch in the Patent Office at Washington?

Mr. Fess: That is right, in December, 1932. I think the evidence discloses there was a further conference between some of the Lynch representatives and Hartford representatives in '32, and Lynch had won the decision, and of course they were going ahead. It was very evident that Lynch was fighting this thing, and it wasn't until in June of '33—as a matter of fact, they lost the decision in June of '33, and long negotiations were had with Hartford until some time in July, I think possibly the 3rd or 4th or 8th of July, there were conferences between Lynch representatives and Hartford representatives about the possibility of settling this Headley-Thompson Interference. Lynch knew for some time that Hartford had an option. They thought they had an option for certain rights under the Headley-Thompson patents, which is true. Hartford did not get its option to purchase the Headley-Thompson patents until some time in about the Spring of '33, and Lynch did not know that Hartford controlled following the option until it was published some time in May or June of 1933.

The Court: It was at least in May when I think Mr. Levis advised them——

Mr. Fess: That he could possibly arrange a settlement. [fol. 12326] The Court: —that he might arrange a settlement. That was in May; he might arrange the settlement with Hartford, which of course conveyed the implication that Hartford had an interest in Whitall-Tatum.

Mr. Fess: That is correct. Of course, before the negotiations were concluded Lynch knew that Hartford had—could make some arrangement with Whitall-Tatum that would permit it to take a license. But, Your Honor, it seems to me that letters between Hartford and Lynch, who were competitors, Hartford primarily interested in feeders and also developing a forming machine, with the suggestion that they might get together, certainly cannot be evidence of an intent of the recipient of that letter to conspire to unduly restrain trade in the business in which it was engaged. Furthermore, the government does not even allege that. It alleges that this conspiracy occurred by reason of the entering into of this contract in August, 1933, and the Lynch's refraining from selling forming machines after it had entered into that contract.

I want to reserve some time, Your Honor, for my associate, Mr. Diven, to reply, but before closing I would like to again direct Your Honor's attention to a case which I

have quoted from, not at length, in our brief, that Creamery case, which was a case where it was assumed that the conspiracy existed. The defendant had entered into four or five different contracts with the chief conspirator in that [fol. 12327] case. It had conveyed patent rights, and in that case it was held that nevertheless it could deal with a member of the conspirators so long as it did not cooperate itself actively in the furtherance of that particular conspiracy. And in conclusion, may I again point out to the Court that whatever illegality might be possibly inferred from the conduct of Lynch in 1938, it voluntarily secured the right to sell press and press and blow machines without any license restrictions; that in September, 1940, before the trial commenced, out of an effort to settle the issues in this case, it entered into a new contract with Hartford pursuant to which it has since that time been free to sell all of its machines without any license requirement, and it has sold machines to Reed, and has offered those machines to Obear-Nester. Whatever illegality might be possibly inferred from the conduct of Lynch Corporation has now been completely removed from the case, and as the Court has said, I think in the Pan-American case, it seems to us in this case the Court should not be called upon to perform an autopsy on issues that have become dead by reason of the conduct of the parties. An Anti-Trust case for an injunction is no different from any other equity case, except that the burden is not imposed upon the plaintiff to prove irreparable damage, as in the ordinary case. Courts do not issue injunctions unless—and that is true of Anti-Trust cases—unless there is a dangerous probability of resumption of practices that have been alleged to have been viola- [fols. 12328-12352] tions of law which have subsequently been abandoned, and as pointed out in our brief, it doesn't make any difference as to the time when that abondonment occurred. The question to be determined is whether it was in good faith, and whether there is a dangerous probability of a resumption of those practices. For sixteen years prior to '33 Lynch sold its machines without any patent control or respecting patents of any kind. It was fighting through five years of that pretty vigorously. When it lost its fight, for five years it sold its machines but it refrained from selling those machines to persons who did not secure a license from the owner of those dominant patents. In 1940 all those restrictions had been released, and, repeating myself,

we feel this Court should not take the time to perform an autopsy upon these so-called dead issues.

* * * * * * *

[fol. 12353] Mr. Diven: If the Court please, I have but a few minutes, and therefore my remarks will have to be brief on each of the subjects I want to cover.

In the first place I want to answer a little bit more particularly my version of the questions you asked of Mr. Fess. You asked if there was not some confusion, if I understand correctly, immediately following the execution of the 1933 contract, relative to whether or not Lynch would sell any machines without a license, and if so, was that referable to a feeder license or a forming machine license? Now, I will say this, my understanding is this,—I have been away from it for some time,—when the 1933 contract was entered into on August 23, there was an understanding that the engineers would get together to determine definitely those of the models of the Miller machines which were covered under the Hartford contract. Some of them were and some of them were not, they hadn't agreed on that, and there was some question.

The Court: Is that the side agreement that was made?

Mr. Diven: It was an understanding which was supplemented by the list, and that list was worked out,——

The Court: Is that in the record, do you know?

Mr. Diven: The list, I believe.

The Court: All right.

[fol. 12354] Mr. Diven: During that period of time there was the confusion as to whether or not this machine was covered definitely or was not,—that is, the Miller type machine. Some of them did require a license and some did not. There were some they all agreed on readily without any trouble, but there were a few in question.

On the question of whether it extended to the use of a feeder license rather than to a forming machine license, there was a letter or statement of Mr. Doll, who was at Columbus, had been with the Miller people, and his first statement was that it required a feeder license instead of a forming machine license, and that was immediately corrected when it was found out. And then the general letter went out, if the Court will remember, in which there was a general statement in which that was cleaned up, but that was the occasion of confusion on Mr. Doll's part.

Now, we have now learned for the first time that the government is now contending that Lynch is alleged to have joined this conspiracy on May 12th. Their complaint, after three years of investigation, full access to all of our files and so ofrth, specifically alleged it was by reason of the entering into this contract of August 23, 1933, that we were charged we were entering this conspiracy.

Now, let's go back a minute to the purchase of the Ed Miller Machine & Mold Works. It comes as quite a surprise to me, if Your Honor please, that there is a contention they were competitors, because I had certainly felt they [fol. 12355] had abandoned that claim. There is, it is true, in the evidence, some statement that narrow-neck machines may make, and some manufacturers do make, a limited amount of wide-mouth ware on narrow-neck machines, but it is of an inferior quality, and that the quantity is being constantly diminished because thereof, and that it is impossible to manufacture narrow-neck ware on the wide-mouth machine. But, if the Court please, in reading the decisions of the United States Supreme Court as to what constitutes competition, I note the one element. There is not a word of testimony to the effect that one manufacturer sought out a customer and tried to sell him one machine in competition with the other machine. There is not one statement from a man in all the industry that they considered them competitors. In fact, the first witness on the stand, Mr. F. G. Smith, was asked by Mr. Isseks, wasn't Miller a competitor of Lynch? and he said, Why, no, we didn't consider him such in the trade. They got the same answer from Mr. Levis; substantially the same, as I recall, from Mr. Collins; and Mr. Werbe testified there was no competition, that they didn't consider themselves competitors. Now, that is the question upon competition. There is not one word that we ever went out and tried to sell a Lynch machine as opposed to the Miller machine.

Now, I must pass on hurriedly, if Your Honor please. One other question. You asked about some of these letters, the letter of February 9, 1931, of Mr. F. Goodwin Smith to [fol. 12356] Mr. T. C. Werbe was in answer to a letter of February 6, 1931, from Mr. Werbe to Mr. F. Goodwin Smith, in which he says:

"We enclose copy of our Lynch and Bridges patent 1,788,312. No doubt you already have a copy of this patent

and have considered it in connection with your narrow-neck bottle making machines, which we think are infringements.

"No one in our organization has seen your new model machine, but from the illustration which you recently published, and from what we have been told concerning your new machine, we fear that there may be an infringement of our patent."

Then he goes on to point out as to their friendly relations in the past. That letter is then answered by the letter of Mr. F. Goodwin Smith of February 9, 1931, to Werbe, in which he says:

"We beg to thank you for your very friendly letter of February 6, 1931, enclosing a copy of the Lynch and Bridges patent 1,788,312, and calling our attention to the possibility of infringement of this machine by our new model narrow-neck forming machine.

"We have not as yet had time to carefully study the Lynch and Bridges patent, nor have we as yet been able to obtain a copy of the history thereof, and have hence been [fol. 12357] unable to form any very definite opinion as to the possibility of infringement by us of any valid claims in the patent. We are, however, proceeding with a careful study of the situation, and it may be that from such study it may appear that there is an infringement of some claims.

"Of course, we cannot at this time form any opinion as to possible infringement of pending applications to which you refer.

"We ourselves have a number of pending applications on our various machines as well as certain issued patents, and in some we have allowed claims and expect further claims, which we believe may be infringed by your new model, though we have no complete information as to the model.

"In view of the situation which is pending and which possibly may result in infringement by each of us of patents owned by the other, we believe it would be desirable to arrange a meeting with you, and if you desire, your Mr. Holcomb, so that we may have a round table conference on the situation.

"We suggest that if you agree with us as to the propriety of such a meeting, that you and Mr. Holcomb meet with me and Mr. Parham in New York at your earliest convenience.

"We feel that such a conference might readily lead to an arrangement which would not only favor the continuance [fol. 12358] of the friendly relations existing between your company and our company, but that a position might be created which would more fully protect us both against outside competition."

May I state the letters, both of them, are wholly concerning a conference to see if they could settle their differences, but may I add, if the Court please, the record shows there was no such meeting; Lynch dropped the matter and that was the end of it; there was nothing further done about it and no more attention paid to it.

Now, referring to another letter, the "funny business" letter, of April, 1933,—my explanation of that is this: at that time Mr. Werbe wrote Mr. Rice that Owens had requested him to come up there to see about an order, but he wasn't sure that is what they wanted, there was some funny business going on, and he wasn't sure that they didn't want to pump him about the Amsler-Morton matter. In other words, I take it only Mr. Werbe's expression is saying he didn't think it was a discussion of the order they wanted, they wanted him up there to pump him, because it was not their usual practice, they usually probably sent an order and let it go. There is no complete explanation of it, as I believe, in the record, other than to show that the Amsler-Morton matter was going on at that time. Mr. Werbe, at least, said he didn't remember exactly as to what [fol. 12359] it was that he had in mind.

The one other question was the "Connecticut chiseler" which you asked about, and that was, if you recall, in a telegram from Mr. Werbe to Mr. Watts, and Mr. Werbe had sent it in the West, he was going to Colorado, and it was, to my way of looking at it, only this,—Mr. Werbe didn't have any real hopes that they would get very far with any kind of an adjustment he could make at all with Hartford, and in fact he had gone on to his vacation feeling there would not anything come of it.

Mr. Kramer now, as I said, stated a while ago he contends we entered the conspiracy on May 12th. Because of what? Because we saw Mr. Levis and because Mr. Werbe was able to get Mr. Levis to undertake to agree to loan him some money his company needed. And, keep in mind, if the Court please,—at least I would like to refresh the Court's mind,—that at that time the evidence in the case

discloses that Mr. Levis had offered the Miller Mold & Machine to his company, Owens-Illinois, and that they were not interested, and that he therefore felt free, individually, and with his friends and family in his Illinois Company, to make such investments or such aid as he saw fit. At that time there is not a word of testimony that Mr. Werbe knew —in fact, he testified that he did not know—that Owens-Illinois had any interest whatsoever in the Headley-Thompson. He had learned in March for the first time that Hart-
[fol. 12360] ford had more than a mere option to secure a license under Headley & Thompson.

The Court: What is your understanding as to the consideration that passed from Lynch to Hartford and from Lynch to Owens in exchange for the receipt of the $125,000 from each?

Mr. Diven: My understanding is this: that in the first place, we had obligated ourselves to buy the assets, as Mr. Werbe testified. He then cast about to see what he could dispose of to keep from selling so much stock as to thin himself down. He did, and there was an investigation, I believe the record disclosed at that time, of this feeder patent that Miller had and which he acquired in the purchase of Miller at that time, that would seem to fit into the picture of one of the developments that Hartford wanted to make. That, coupled with our granting to them any and all feeder rights that we had,—and I think there were some, and which we might get in the future, was the consideration for the $125,000. Equally, the consideration moving to Owens for the $125,000, that they got, were the patents which Lynch had which would apply to and could be used, not perhaps to permit one to build, but might be used in such a way as to permit the holder of the other patents from proceeding with certain developments into suction feeding.

The Court: Were they patents that had been acquired
[fol. 12361] through Miller?

Mr. Diven: No, sir; we acquired no suction patents whatsoever from Miller relating to the subject.

The Court: Had Lynch ever proceeded on any patents to the manufacture of any suction machine?

Mr. Diven: Never had. In fact, Mr. Werbe testified he had never been in it and didn't want in it. He had always been in the gob feeder practice, he had argued it all his life and thought it was satisfactory, and he didn't want to go into the suction, and that was back even at the time of

the sensational rise and fall of Knox-O'Neill, if I remember correctly.

Now, it is contended by the government—another matter that is a little bit strange to me—this idea of connection, and it seems the government wants to now take the attitude all they have to do is to get a little dirt into something and it attaches onto everything.

I have the idea still, if the Court please, that there is an obligation and a duty upon the government, in this case, to establish by a clear preponderance that you have spoken of this morning, one's connection with a conspiracy, before any statement of a so-called alleged co-conspirator is or can be used against him. In other words, I believed, and still believe, that the law of conspiracy is founded upon [fol. 12362] what you might say partnership, and until one becomes a partner the act of the other does not bind him. But it is so easy to just make a statement and therefore so and so. That is the same statement as we have had here of the classical example of acquiring your last and only competitor. But we say we were not competitors in any sense of the word.

Thank you so much.

RULING

The Court: I think that insofar as this motion is concerned, the Court will utilize the next few minutes in connection with it. The motion is, without waiving their rights to offer evidence in the event this motion be not granted, defendants Lynch Corporation, Thomas Chandler Werbe, E. G. Bridges, A. J. Doll, J. L. Watts, Uz McMurtrie and N. M. McCullough, and each of them separately, move for a dismissal upon the ground from the facts and the law the plaintiff has shown no right to relief against these moving defendants.

I have spent considerable time in the study of the three briefs, two by Lynch and one by the government that have been filed in connection with this motion, and I think I have re-read every exhibit in the record that touches upon the accusation that Lynch participated in a conspiracy such as is complained of in the complaint of the government. I thought it necessary, today, to listen to the argument of counsel on both sides, in order to confirm some conclusions [fol. 11363] that I had arrived at and to listen to the reasons

ascribed by counsel to other matters and transactions that the record discloses.

On the whole, taking this view, if the Court now were to assume that a conspiracy was in existence between, we will say, Hartford and Owens, looking to the restraint of trade, looking to a combination in restraint of trade in violation of the Sherman Act, and that their actions were looking to a violation and were in violation of the Clayton Act, assuming that there has been some combination or is a combination, the Court is of the opinion that at this time the motion of the Lynch Corporation ought to be denied so that its whole participation in this matter may be weighed by the Court as one picture, in due course, and then by the Court determined whether or not a conspiracy did exist, and if it did, whether or not this movant, the Lynch Corporation and co-individual defendants were a party to such conspiracy.

Therefore, at this time, the Court will overrule the motion of the Lynch Corporation, of Thomas Chandler Werbe, E. G. Bridges, A. J. Doll, J. L. Watts, Uz McMurtrie and N. M. McCullough, for dismissal.

I do not believe at this time that I care to go into a discussion of the various questions raised by the motion and by the briefs in support of and in opposition to the motion. Counsel have ably presented the matter on both sides. [fol. 12364] The Court feels that he is well acquainted with the facts contained in the record and as disclosed by the evidence and testimony of the witnesses, pertaining to this moving defendant and co-defendants, and the Court is not going to go into any detailed reasons for overruling the motion other than those already stated,—that he believes that this defendant ought to be retained, at this time, in this case, for such disposition as the Court may deem proper in due course.

* * * * * * *

[fol. 12365] (At ten o'clock a. m., Friday, February 27, 1942, the proceedings resumed.)

The Court: You may proceed on behalf of the Glass Container Association.

Mr. Day: If Your Honor please, this is the motion of the Glass Container Association, the defendants Stevenson and Ackerman, to dismiss the complaint of the plaintiff at the

end of the plaintiff's case, the motion being filed under Rule 41, the ground being that plaintiff has shown no right upon the facts and law to relief against these defendants. In other words, we contend here as to each and all of these defendants there is a failure of proof. Your Honor indicated yesterday that there has to be a clear preponderance of evidence establishing the essential charges made against the defendants, and this motion is upon the ground, not only that there is no such clear preponderance of evidence, but there is an absolute failure of proof here as against these three moving defendants.

Now, there was some discussion yesterday as to what the conspiracy charged in the petition is. It is our contention that the conspiracy charge is a conspiracy to monopolize, first, patents on automatic glass machinery for the production of press and blow glassware and glass containers; second, machinery for the production of press and blow glassware and glass containers and the distribution of such machinery, and third, through the control of patents on machinery, on glass-making machinery, to effectuate a [fol. 12366] monopoly or combination in restraint of trade in the manufacture and distribution of press and blow glassware and glass containers.

In other words, it is our construction of the petition that the government must establish here in order to make out the conspiracy charge that there was an attempt to monopolize patents, or glass-making machinery, and that the charge as to a monopoly on glass products as distinguished from monopoly upon patents and glass-making machinery is merely a charge that the basic conspiracy consisting of the conspiracy as to patents and as to glass-making machinery was effectuated through the control of the patents and the machinery.

In other words, there must be proof here of a conspiracy to monopolize, either patents or glass-making machinery, or both.

Now, in that aspect of the case we perhaps stand in a position different from any other defendant at this bar. We had absolutely nothing to do with patents. We had absolutely nothing to do with glass-making machinery. In this argument, and I want to reserve some time for Mr. Rose—I am just going to try to touch the high spots. Your Honor has read the brief, you have examined the records,

you know what the evidence is. But our first point is that we had nothing to do with the matters and things which are the basis of the conspiracy charged here. We had no connection with Hartford, which we may assume [fol. 12367] together with Owens and certain other defendants, constitute the principal factors or center or basis of the conspiracy charged here. Hartford had certain men that belonged to the Glass Container Association. They never exercised any dominion or control over the Glass Container Association. The most the Government claim in their brief is that Hartford had a man on the Research Committee, or standard testing procedure committee, and a technical committee for research. That is about all of the participation in the affairs of the Association that Hartford had.

So the first point I wish to make is that this conspiracy being what I have attempted to describe, there is no proof connecting us with that conspiracy, and there is no charge of any other separate and distinct conspiracy. We are charged with doing and attempting to do certain things, to accomplish certain ends and purposes, but I do not believe the petition is susceptible of any construction except that which would characterize the charging of the doing of those things by us as the carrying out of the main conspiracy, and there is no charge against us that as members of the Association, or as officers of the Association, we carried out any separate and distinct conspiracy.

Now, the principal charge against us—of course if we are right about the proposition, I take it that we are entitled to have this motion sustained and further argument [fol. 12368] would be unnecessary, but now considering further charges against us and touching the high spots only, the first charge that they make against us is that we tampered with the price structure.

The Court: Now, perhaps we can shorten the matter of your argument a little. As I understand, the substance of that charge is contained in the activities of Mr. Kimble of the West Coast—correct?

Mr. Day: Well, that and what Hartley says.

The Court: Well, I am referring to Mr. Kimble now. You may discuss that feature of it, his activities, as you might say.

Mr. Day: Well, I would like to have Mr. Rose discuss that feature, because that is something that he will discuss.

The Court: Well, so much for the price question. There are two other questions that I would like to hear you discuss, and those are first, the question of the quotas, or forecasts, and second, the question of the participation of the Glass Container Association, through Mr. Ackerman, if any and Mr. Stevenson, in the suppression of the industry; that is, in the discouragement of prospective new concerns in the industry, in particular the letter from Mr. Pease to Mr. Stevenson and Mr. Stevenson's reply.

Mr. Day: That is Ackerman.

The Court: Ackerman.

Mr. Day: This Pease and Ackerman correspondence?

[fol. 12369] The Court: That is right.

Mr. Day: Well, now, if I may, I would like to have Mr. Rose discuss the West Coast, because it is something that he is prepared to discuss. I intended to submit that in the opening argument on brief. I intended to say something about Brother Hartley, but I think perhaps that is unnecessary.

The Court: Well, I don't say that is unnecessary. There are some exhibits in the record to and from Mr. Hartley discussing certain phases of this question, that are matters of record, and I assume that in his capacity of President of Turner at that time, that what he said and did had some weight.

Mr. Day: Well, I will discuss briefly Hartley. I want to be charitable in dealing with Mr. Hartley. I have made it a rule of almost over forty years in practicing law never to be uncharitable or ungenerous to any witness. Your Honor saw him on the witness stand; you heard him testify. I am glad that you had that opportunity. He had nothing to do with anything in this lawsuit after 1930, twelve years ago. He testified, and was asked leading questions—he testified to a great many things that were said by Mr. Stevenson. He testified to that Rommel letter, and then he was called back for cross examination, and he began that cross examination by correcting his testimony in many particulars, voluntarily doing that. Then there was a trip made, [fol. 12370] I think before he testified the first time—a trip

made by Mr. Kramer and Mr. Hartley out to Indianapolis. He want out there to get some papers that were supposed to identify and connect the Glass Container Association with this conspiracy. He stated on the witness stand, in substance, that everything he said about the Stevenson conversations and Stevenson statements would be borne out and supported and corroborated by the papers that were out there. He came back, and Mr. Thompson of Indianapolis came to the court and he was counsel for the Receiver of Turner, and he brought the papers in. Your Honor appointed your secretary, and, I think it was Fred Kruse or somebody, to look into those papers. They found absolutely nothing connecting the Association, and that stipulation is in the record—found nothing, because there was nothing there, and probably never had been anything there. Then you remember the cross examination, he referred to the Rommel letter. He testified in answer to leading questions on direct examination, in the absence of counsel for the Association, that the Rommel letter was clearly a letter advocating the tearing down, the shutting down of small industries. I read him sentence after sentence, one at a time, the most innocuous sentences in the world—and he said each and every one of those meant, closed down a factory. Why, if there had been a "very truly yours" ap- [fol. 12371] pended to that letter, he would probably have said the same thing about that. Then he came back the next morning with a farewell letter to Your Honor. I don't know whether Your Honor read it or not. We read it—nobody wanted to put it in. I say he was a thoroughly unreliable witness, and I say there isn't a single letter that he introduced that makes any case as to price tampering as against us. Even upon his own testimony, going back ten or twelve years, he says that the discussion of prices was after contracts were made and prices were determined, which is not a violation of the Anti-Trust Law.

I am perfectly willing to submit the question of the price phase of this case upon the proof and what Mr. Rose will say as to the West Coast, and I am perfectly willing to have Your Honor, from Your Honor's experience as a judge and as a lawyer at the bar, to determine how much weight you want to give to Hartley's testimony, and I don't want to say anything more than that, or anything more blunt than that about Hartley.

Now, there are two charges in this case against us that Your Honor wants to hear from us about and we want to talk about. The first one is that we discouraged newcomers —tried to keep the newcomers out. In support of that, leaving Ackerman's testimony out for the moment, and I will come to consider that in just a moment—in support of that the government has introduced five or six or perhaps [fol. 12372] something more than that, ten or twelve letters—letters written over a period of ten, twelve or fifteen years. With all the files of the Association available, with the files of every corporate defendant here available, with the files of every individual defendant available, with many of these important defendants called upon the witness stand, throughout that whole period of years, they were able to bring in only a comparatively few letters.

Now, in weighing the facts and deciding the issues of fact here, it seems to me it is significant that they were not able to bring in more letters, to show more statements, to show more action and conduct, more steps taken, more principles promulgated, to keep the newcomers out. Surely if there was a conspiracy to that end, if this Association was devoting its time and effort to that end, we expect to find more than what they brought in here. Now, what have they got? As outstanding evidence here they have got the Ackerman and Pease correspondence, and they have got Ackerman's testimony on the witness stand. Now, going to the Ackerman-Pease letters, there was one written in 1933, January, 1933, and that is a letter from Pease to Ackerman. That is shortly before the Code went into effect. The Code went in in 1933, October, '33, and was in effect until 1935. I am going to say something about that before I get through because that is important here, that Code era, when the government itself, so long as production was only 70 per cent of capacity, was seeking under the [fol. 12373] Code to have some allocation limitation placed upon the production by the members of this industry.

Now, there wasn't any conspiracy between Ackerman and Pease or the Association and Hartford prior to 1933. If there had been—that is, to keep newcomers out, to prevent expansion of the industry—if there had been Pease never would have written the letter he wrote to Ackerman in which he says, "From time to time we had inquiries for equipment in connection with establishing new glass plants.

Needless to say, due to the over-crowded condition existing in the industry today, we are reluctant and, in fact, refuse to license new tonnage."

Due to the over-crowded condition in the industry, in 1933, in January, which everybody knows was hard times. My recollection is that President Roosevelt went in on March 4, 1933. That was the time of the closing down of the banks, and depression, and things of that kind, very shortly before the NRA and the Code.

Now, Pease says in that letter, and he testified, and he denies any attempt to keep out newcomers in conjunction with Ackerman, and then Ackerman denied it also. But "needless to say, due to the over-crowded condition existing in the industry today"—"It occurs to me that your association is in a position to do some good work along the lines of discouraging new interests from entering the glass business." Now, if they had ever tried to do it before [fol. 12374] 1933, it would not have occurred to Pease for the first time in January, 1933, that the Association might be in a position to do some good work. "While we appreciate that you are desirous of obtaining new members, your organization will be only so strong as the individual member," etc.

Now the next paragraph, "Maybe your organization has made a practice of treating inquiries along the lines we have."

You see, there is no conspiracy up to that time, or he would not be saying maybe you can be doing something, "If so, we feel that such a policy is constructive, at least at the present time, though we have never had first hand exactly what your policy has been"—didn't know up to that time what the policy of the Association was, in 1933, shortly before the adoption of the Code.

Now, Ackerman writes back. He wrote a frank letter. He was a frank witness on the witness stand. There isn't any basis for the suggestion that Ackerman on the witness stand, under cross examination, and a very able cross examination, by Judge Freed, misstated anything. If ever I saw a man who was willing to stand or fall upon his story, he was, and we are willing to have him do it. "I was very much interested in your letter telling me of your activity with regards to new bottle companies coming into the industry. Your thoughts tie in very closely with the

thoughts we have had, and I have done a good deal of work during the last several years in an attempt to keep [fol. 12375] new plants out of the picture." Why? What does the record show? Now the burden is on the government here to make out their case by a clear preponderance. He was discouraging them—how? By giving them the facts, and in no other way. Now, he says, "I should be very glad to discuss this with you the next time we get together so that our stories may fit together." Well, they say that's terrible; that shows that they had some kind of a conspiracy —so their stories would fit together. Two men who upon the undisputed evidence had never written each other concerning the subject before, and the explanation Ackerman gives is that the Association had the figures, the statistics and things of that kind, and that Hartford had a knowledge as to new plants and the construction of new plants and things of that kind, so the logical explanation is, when you talk about the two stories fitting together, so that what he had by way of information could go along with what Pease had. Now, there are those two letters. I say, based upon an experience of many years in the trial of all kinds of cases, and I am simply speaking as if Your Honor would be down here and I was up there, or if any of these other experienced lawyers were arguing this case—if these two letters are all the government could find upon this subject, with the access they had to all the files, with all these men on the witness stand, over a period of all of these years, to show there was a conspiracy to keep newcomers out, [fol. 12376] then there wasn't any such conspiracy. And it would be stretching the point very far, I respectfully submit, to say that those two letters, not standing unexplained, but explained as they have been by Pease and Ackerman, in the light of the testimony of Pease and Ackerman, under oath, that they never were parties to any such conspiracy, with a very slight connection between Hartford and the Association, it would be stretching the point to say that those letters, and the other letters, the other sporadic letters, over the long period of years—all they could find, that those letters make proof by a clear preponderance of a conspiracy to keep newcomers out.

Now, let's talk of another thing, Ackerman's testimony. They wrench out of the context of that man's testimony one or two phrases, and they point to one or two phrases and say, now there is the evidence of the conspiracy. He said

that he colored the facts. They state that when he colored the facts so as to discourage the newcomers, that he meant he misstated the facts. Did you see anything in Ackerman on the witness stand to indicate that he was misstating anything? Was there in this trial that has lasted for months, a more frank witness on the witness stand than he was? If he said he colored the facts, he meant that he presented the facts in such a way as to give them to the prospective newcomer, and he said all I did was to give them the facts. If the facts discouraged them, all right, then they were discouraged. There is no law that I know of that has been enacted or ever will be enacted, making [fol. 12377] it an offense to give facts. And is there any evidence in this case that Ackerman ever gave any newcomer or anybody else anything but facts? In these letters that were written to various newcomers, is there any suggestion that he told them anything which was not true? He gave them the facts. He had a right under the law to give them the facts. Now, if they were discouraged by the facts, then they were discouraged. Would anybody then have given the newcomers anything but the facts? Now, that is all there is, as I see it, to that charge of discouraging newcomers.

Now I come to the principal charge in the case, and that is the charge that has to do with these quotas. Now, what must they show? They must show that the Association was a party to enforcing quotas; that there was an agreement as to quotas; that the Association in what it did with relation to giving out the forecasts was doing something by way of disseminating information it had no right to do, and that as a result of the quotas there was an agreement to which Ackerman and Stevenson and the Association were parties, and an agreement in furtherance of the basic conspiracy charged here against the defendants.

Now, in our brief we described the origin of these quotas. —at least we describe what we believe they are. That is on page 24. The G.C.A. sought to deal with this situation [fol. 12378] in two ways. What situation? The situation that confronted the industry. Concededly the actual capacity, the usable capacity, not the potential capacity, was much greater than the shipment and production, and G.C.A. sought to deal with this situation in two ways. The first, and by far the more important in point of dollars spent

was to widen the market for glass containers, thus filling up the unused capacity and removing the problems which it created. That was one of the principal purposes of the Association—increase of production and the sale of glass containers generally, so that the industry as a whole, and all the members of it, would have a greater market, and that was one of the prime purposes of this industry, and that was the principal purpose of what the government has called, and perhaps Ackerman called the Stevenson principle of live and let live. The second was to preach to the industry the economic truism that no substantial part of the industry could expect, in this situation, to secure a substantial increase in its own percentage of the total industrial volume without driving others out of business and leaving the industry in a more chaotic situation than before. It was the hope of Stevenson and Ackerman that the members of the industry would individually recognize the truth of this principle and would individually and voluntarily act upon it; and that was the entire purport and content of the so-called Stevenson principle of live and let live, or, as it was sometimes described, the equitable [fol. 12379] sharing of the available business.

There was no agreement between the parties. There is no proof of an agreement here. There is no proof of any adherence to quotas. The proof is all the other way. And the very tables that the government has attached to its brief demonstrate, I think, even from their own argument or their own point of view, that there was no agreement and no adherence and no enforcement.

What was done starting in 1928 with relation to these qoutas was justified and is justified today by the law of the land applicable to the facts here presented, by the decision of Justice Stone, now Mr. Chief Justice Stone, in the Maple Flooring case. I am not going to read from cases. I am just going to read that one excerpt from that opinion which is applicable here: "It is not we think"—said Judge Stone—"open to question that the dissemination of pertinent information concerning any trade or business tends to stabilize that trade or business and to produce uniformity of price and trade practice. But the natural effect of the acquisition of wider and more scientific knowledge of business conditions, on the minds of the individuals engaged in commerce, and its consequent effect

in stabilizing production and price, can hardly be deemed a restraint of commerce, or if so, it cannot, we think, be said to be an unreasonable restraint, or in any respect unlawful.

"It is the consensus of opinion of economists and of [fol. 12380] many of the most important agencies of government that the public interest is served by the gathering and dissemination, in the widest possible manner, of information with respect to the production and distribution, cost and prices in actual sales, of market commodities, because the making available of such information tends to stabilize trade and industry; to produce fairer price levels and to avoid the waste which inevitably attends the unintelligent conduct of economic enterprise. General knowledge that there is an accumulation or surplus of any market commodity would undoubtedly tend to diminish production, but the dissemination of that information cannot in itself be said to be restraint upon commerce in any legal sense. The manufacturer is free to produce, but prudence and business foresight, based on that knowledge, influence free choice in favor of more limited production."

Now, under the doctrine of that case, we say what we did is above criticism here. All we did was to provide the information, to disseminate the information, leaving it to each member of the Association to say to what extent he would regulate or conduct his business, having that information in mind—something we had an absolute right to do. All other witnesses have testified,—Underwood and Knox testified, Rieman testified. These other men testified, that there wasn't any agreement, there wasn't any obligation, there wasn't any coercion, there wasn't any saying—you shall do so and so.

[fol. 12381] The Court: Now that point, Judge Day, I wish you would discuss a moment. What do you say as to the effect of the Committee of seven, the Statistical Committee, meeting monthly and exchanging these figures, including the quotas, or having them read to them, or having them passed around among them by the Association—what the effect of that course of conduct might have. I think it is suggested in the American Column Lumber case, that there might be some moral sanctions involved in a committee of such a character which is made up, we will say, of seven important figures in the industry.

Mr. Day: I was going to come to that.

The Court: Now, I have this in mind, and I am trying to avoid the NRA period. But I have before me here an exhibit, 421, which is addressed to George F. Collins, the president of the Liberty Glass Company, Oklahoma, and its author is F. G. Smith, and he says, "The real and fundamental trouble is that the capacity in the industry is about 33-⅓ per cent greater than the consumption. The same situation exists in a number of other major industries, such as textile, leather, silk, etc." Now, this is May 10, 1928, "The plans of the committee appointed by the Glass Container Association should help somewhat, but I believe it is going to take a considerable amount of time before the situation gets much better."

Now, a little further along, November 29, 1930—and [fol. 12382] I am getting ahead of the NRA period here—a communication, I think Knox Smith is the author of this, following an interview with Mr. Hazelton, in which he says, "There was also a discussion of Mr. Levis' policy of the 'survival of the fittest'. It was pointed out that, if, under this policy, weaker concerns were forced into receivership there would then be one of the worst forms of competition, namely, that of a bankrupt concern. Also, someone might come in and buy up the plant at a very low price and also be a bad competitor."

Then a reference to the Turner Glass, which was in 1930, when Turner was apparently in trouble, and then he says, "Mr. Hazelton says that Turner, Knox, and Salem have been the trouble-makers, producing above their normal quota." Now, this is 1930,—Turner, Knox and Salem have been the trouble-makers producing above their normal quota. Now, this is following a communication of F. G. Smith referring to the committee which was appointed by the Glass Container Association in 1928. Now, that is Exhibit 261 that I have had in mind.

Mr. Day: That is in 1930.

The Court: That is 1930, and there follows an exhibit, 1761, of August 12, 1929. It is a memorandum of a conference held at Toledo August 8th and 9th, 1929, and Knox Smith is the author of this. He says, "Mr. Levis said that he would agree to this,"—now we are speaking of the [fol. 12383] Laurens Company—"Mr. Eldred states that the Laurens Company wanted an extension of their field

sufficient to occupy their present feeders in full. Mr. Levis said that he would agree to this but would like to have us suggest to Laurens that they get from Mr. Stevenson a regular quota allowance on these new lines."

Now a little later, and after the NRA, in July of 1935, there is a communication here by Mr. Rieman, who, of course, was the president of Capstan, and in July of 1935, I think there was a communication that he was the author of that was stressed in the brief of the government. I am referring now to Exhibit 811, which is in addition to that suggested in the Government's brief. He is speaking now of Diamond. "The main thing we would be buying would be quota. The six major concerns control about 74% of the industry, and since the quota system was in operation years before NRA, and since at the past meeting all of the major concerns were still in favor of maintaining it, it seems likely it will continue. However, before doing anything definite at Diamond we would of course make sure the major concerns would guarantee this quota to us if we buy the plant and dismantle it. Their quota amounts to .7% (as compared to Capstan-Salem 6.0%), and would be about $600,000. Last year Capstan earned about 7% on sales, but eliminating fixed overhead which would fluctuate practically not at all in the event of increased volume, and which at Capstan last year amounted to $396,000, we would [fol. 12384] show a profit of 21%." Now I want to refer also to Exhibit 854, which is a letter from Mr. W. E. Levis to Mr. I. R. Stewart, of Anchor Cap & Closure Corporation, dated April 2, 1936, and in that communication he says,—this is really with regard to possible purchase of Obear-Nester by the Anchor—"I discussed this with him"—meaning Richard Moss—"and all other phases of the industry, including the probable discount of his business due to the fact that he had some contested litigation with Hartford and that any company that was trying to stay within its allotted position in the industry could not acquire his company without the loss of considerable of the business he has taken on during the past year or two." That is Exhibit 854, dated April 2, 1936.

Now, having those in mind, what do you say as to the effect of the Statistical Committee, or committee of seven, or by whatever name, it makes no difference, that is made up, we will say, of the seven of the leading figures in the

industry, meeting monthly, through the medium of the Glass Container Association and by virtue of its existence, and discussing quotas and exchanging their quotas—what do you say as to the effect along the lines indicated in the American Column Lumber Company case, on moral sanction it might have upon the industry as a whole?

Mr. Day: I haven't the time to go over those letters one at a time——

[fol. 12385] The Court: Well, I wanted to give you the idea as to what the Court had in mind.

Mr. Day: Yes, but there is no proof that any moral sanctions were applied in this case. Regardless of what F. Goodwin Smith, who never had anything to do practically with the situation, wrote back in 1928, or what Knox Smith said in a memorandum of August 12, 1929, or what Mr. Levis records of an interview he had with Mr. Hazelton in 1930, there is no proof of the application of moral sanctions. That is my answer to that. So far as Rieman is concerned, he explained these letters on the witness stand, and he said there never was any agreement, that he wasn't a party to any agreement; Dugan said that; Rieman said that. Rieman, who was called to the witness stand, who wrote a letter that referred to quotas, under oath stated what he meant by that, as I recall the record, was there were no moral sanctions applied. Moral sanction, as I understand that doctrine, means, if you have a lot of big, powerful fellows, that they could put the heat on the little fellows, they can even let the little fellow go ahead prosecuting his business, and so long as he is in accord with what they want, they let him alone; but all the time they make him believe if he oversteps the bounds or gets out too far on his own, they will put some kind of pressure on him, and the best evidence, and most convincing, I say, absolutely convincing evidence in this case that there were no moral sanctions applied, is the fact that throughout the whole [fol. 12386] period of the Glass Container Association, it was the little fellow that went up on, it was the little fellow that went over his so-called quota, it was the little nondefendant fellow who went up. So any argument that may be made by picking out a letter written twelve, fourteen or fifteen years ago, by men who have no authority to speak for the Association, and who weren't in the Association, by men who were talking among themselves as to the ad-

visability of stabilizing the industry, cannot be proof by a clear preponderance that the Association was applying moral sanction, when the cold facts show without dispute that we could not have had the conceded existing situation as to the growth of these little companies, and he fact that hey went way above heir so-called quotas, and the non-defendant companies—something which they could not have done very well if moral sanctions were applied, and I cannot conceive of a situation where in fact or law a moral sanction operates, not to decrease the business of the little fellow or to keep him in line, but to permit him to increase his business way beyond the ordinary increase that the big fellows follow.

Now, I was going to talk about other things—there is no adherence here—I have only a short time, and I want to give Mr. Rose some of the time left.

The Court: Twenty-one minutes.

Mr. Day: There is no adherence here. There was nothing in the conduct of the parties, in what they did, suggest-[fol. 12387] ing an agreement, but the very contrary. What they did, as shown by these charts, shows that there could not have been any agreement, that they could not have been operating under any agreement or they would not have done what they did or produced what they did.

Now, we come to another part of the case. There is the Code era, 1933 to 1935. There are about five letters, I think, written after October—two after October, 1935, bearing upon this question. There are no letters after 1937. There were no changes made in the figures of the Forecast, the controlling figures, from the Code days of 1935 until the Armstrong Cork raised the question, and the whole business was abandoned in 1939. The basic figures stood just the same, showing that nobody paid any attention to the figures, that nobody paid any attention to the quota, and showing much more than that, that here was no conspiracy or moral sanctions insisting upon the endorsement of the quota, which would not have been possible if that condition had existed. Now, coming along in 1939, the Armstrong Cork Company raised some question about this quota feature of the Glass Container Association.

The Court: Was that in '39?

Mr. Day: '39—July, 1939. that is right, isn't it?

Mr. Rose: Yes.

Mr. Day: Long before this lawsuit was filed, long before this lawsuit was contemplated, with absolutely noth-[fol. 12388] ing before the Association by way of a threat upon the part of the government, with a system that had laid absolutely dormant for five years, no change, except two little particulars that I won't talk about because they don't amount to anything—no change, no adherence to it, no attention to it, no regard to it or for it, and then this question is raised by the Armstrong Cork Company. They question the legality of it. Mr. Underwood said that they were in the twilight zone, and we gave it up, we didn't give up something that we were insisting upon; we didn't give up something we cherished or were proud of; we gave up something that had had no effect for four years, that had amounted to nothing for four years; we gave up as dead, something which was already dead. We abandoned and walked away from a corpse.

Now, in that situation, what does the Government do? Oh, they say that was all before the TNEC. That is an absolutely unfounded statement upon this record. There isn't a scintilla of evidence, there isn't a scintilla of suggestion that the TNEC hearing which was conducted in 1938 had anything at all to do with our giving up this system. But some reason must be ascribed to our action or for our action by the government, and so they say TNEC. Without a syllable of testimony, the undisputed evidence in this case is, the conceded evidence in this case is, that by reason of the point that the Armstrong Cork Company raised, this whole quota business was abandoned in 1939, [fol. 12389] voluntarily. Now, what are we going to do with that? This is an action for an injunction. The fact that the government is bringing it doesn't make it any different from the ordinary action. The proof must be the same. The foundation for judicial action must be the same, and they must show that now, or at least at the time this suit was filed—I say now—that we were parties to a conspiracy to violate the Sherman Law, and we are threatening to violate it now, so that action by the Chancellor is requisite and necessary to stop us. What are we threatening to do now? What are we doing now in furtherance of the conspiracy in restraint of trade? What are we threatening to do now to encourage a monopoly? Absolutely nothing. We haven't done anything. Even if you could

criticize the quota, and I don't think you can from a legal standpoint, since July, 1939, it was not abandoned after suit was filed, it was not abandoned in the face of a suit, it was not abandoned in the face of the TNEC, despite what they say, because there is no evidence of that at all. Now under the new system what do they say? Well, they say under the new system, which has changed the forecast, that the materials are there, by our reporting history for five years the tools are there, the materials are there, so that if at some time the Association wishes to apply moral sanction it might do so, or it may do so. That is not the basis for an injunction, if Your Honor please. Why, if we wanted to enter into a new [fol. 12390] conspiracy, we wouldn't need any forecast or anything of the kind. They don't say the present system violates the law, but they say a man can take out his pencil and paper, and he can figure where he stood in the industry, and the big fellows having that information before them and having figured that whole matter out with pencil and paper, might apply moral sanction.

Now, there is a great deal I intended to say—there is a great deal more we have said in your briefs. I submit there is a failure of proof here, that we stand by ourselves, different from most of the defendants in this case; that we only can be bound by what was done by Ackerman or Stevenson for the Association, by what these other individual defendants and the other individual companies did or attempted to do for the Association, and when you look this whole record over and ask yourself the question, is that Glass Container Association today, is Ackerman today, who is over with Thatcher,—has been for some time—is Stevenson today doing or threatening to do something in furtherance of a conspiracy such as is charged in this complaint so that they should be stopped by an injunction at the hands of a Chancellor—I say regardless of 1941, just using old-fashioned plain English, there is a complete and absolute failure of proof here. How much time do I have?

The Clerk: Thirteen minutes left.

Mr. Day: All right. Does Your Honor wish Mr. Rose to touch on that Pacific Coast situation before Mr. Apsey [fol. 12391] makes his argument? I would be glad to have him do it.

The Court: If he desires to do so, he may touch on that for a moment or two. I will say for counsel that that is one of the minor matters that the Court had in mind.

Mr. Rose: I think the thing that Your Honor probably has in mind, one or two matters—in the first place, there were some maps introduced in evidence relating to delivery charges. On that I think all that needs to be said is this: While it is perhaps a legitimate inference from the figures on those maps, which, as Your Honor recalls, the source of which is hard to establish because of Mr. Kimble's death, we conceding that he made those notations. We can infer from that that the information was uniform, that the delivery charges were uniform, but there isn't a syllable of proof that they were uniform by reason of any agreement, or that they had been fixed by agreement or anything of that sort. The additional proof relates simply to the fact that there was a discussion in the Association of the possibility of changing them. I believe Mr. McCrystal's testimony is the only testimony on that point. He testified so far as he knew nothing to that effect was done, and I believe the whole thing is a situation in which nothing happened.

One other thing that I recall relating to the general subject of prices on the West Coast was that there were found [fol. 12392] in our West Coast office certain price lists of the Owens-Illinois Pacific Coast Glass Company. No testimony—these price lists, in the first place, were public. They were available to anybody who would go to the Owens-Illinois Pacific Coast Company and get them. No testimony whatever that they were used improperly. They were simply found on file. In my view, they are entirely unimportant.

The third thing I recall, and this is the only particular thing I recall regarding the price situation on the West Coast was that there was testimony that Mr. Kimble, who was our manager out there at that time, audited on occasion the accounts of the books of a particular member of the West Coast Association.

The Court: What did he audit?

Mr. Rose: He audited the quantities shipped to a particular customer who was shifting from one discount bracket to another. That, I believe, is established by the proof. Not a general audit of its books, nothing of that sort, but simply to determine whether or not the man

shipped the quantity which entitled him under the discount brackets as they were then being published to move from one discount bracket to another.

Mr. McCrystal testified that they went in when the Robinson-Patman Act was adopted, that they were very much concerned as to the effect——

The Court: And so was everybody else.

[fols. 12393-12428] Mr. Rose: Perhaps I don't need to say anything further, but I think the evidence shows that it was in relation to that that the procedure of auditing quantities only was adopted by the Association. I recall nothing else relating to the price situation on the West Coast.

Mr. Apsey: Does Your Honor wish to hear from me now, or take a short recess.

The Court: Well, we may take a ten minute recess.

(Recess.)

* * * * * * *

[fol. 12429] Mr. Rose: May it please the Court, the first thing I would like to do is to clear up any misconception as the result of that Hartley episode. We really resent any inference that we talked to Mr. Hartley after he was off the stand, and induced him to change his testimony. We didn't talk to him. No one as far as I know talked to him on our behalf. So far as I know no other defendant talked to him. We talked to him only on the stand.

I wish I had more time to take up specific instances that [fol. 12430] Mr. Apsey has talked about. I haven't. I want to talk mostly about the American Column & Lumber case. I will mention one or two things; for instance, that list, Exhibit 796, to which he referred, in which Mr. Dugan said he would stay within his production limit. Here there is direct testimony about that. Mr. Dugan said what he meant, and that the meaning of the words that he used was that he was not going to enlarge his plant. What he meant by production limits was what he could make, the total capacity he could make in the Olean factory. There are other similar instances where violence is done, in my view, to the meaning of the exhibits or to the meaning of the testimony. But the one thing I do want to devote myself to in the time that is left, is the American Column & Lumber case, upon which the government relies so heavily.

Mr. Apsey went over the parts of our brief in which we discussed the differences between that case and our case. I don't think he has distinguished that case, and I don't think he has brought us within that case. I want to point out to Your Honor why not. In that case there was an elaborate statistical system, very different from the one we have here. The daily report which Mr. Apsey passed over as indicating that was similar to the monthly report we had, was not a report of the total activities of that member during that month; it was, on the other hand, a report [fol. 12431] of all sales actually made, with the name and address of the purchaser, and the kind, grade and quality of the lumber sold, and all special agreements of every kind, verbal or written, with respect thereto. These reports are to be exact copies of orders taken. The daily shipping report was to be a copy of all invoices. Now, those things, the intimate details of the business showing the names of the customers, the price charged to each customer, were to be sent in every day to the Association. Every week the Association was to send out that price information, so that every member of the Association would know every customer of every other member, the price charged in every transaction, what every transaction was. There was another provision that all price lists must be filed; that any deviations from any price list must immediately be transmitted to the Association, which the Association immediately transmitted to all other members.

Now, it is impossible to say we are within that case because of the fact they have only daily reports, we had monthly reports. There is a difference in kind between the statistical system in that case and in our case. Our report was monthly, it showed only the totals, it did not show the detailed individual transactions of the business. There was no provision whereby the Association was automatically to transmit to every member the report, the individual report of a particular member. When that was done it [fol. 12432] was voluntary. And I think all the testimony is to the effect it was voluntary. There are only two witnesses who testified about it, and Mr. Dugan said that the exchange took place at meetings of the statistical committee, where we might exchange the sheets if we wanted to,—most of us did. Mr. Ackerman indicated that the practice which later developed in the Association of reading out the figures by the Association representative and subsequently

putting them on a sheet, was as the result of a voluntary exchange which had grown up; it was not a part of the statistical plan in the beginning.

I point again to the fact that the American Column & Lumber Company case was widely different. There were six people were dropped from the association when they refused to exchange their reports. In this case the whole business stopped in July of 1939, in any event, and as indicated in the testimony of Mr. Dugan, it was not universal, it was not compulsory, it was simply something they did if they wanted to.

I submit that those cases are as widely different in the point of the possibility of applying moral sanctions as two cases could readily be. In the one case every transaction, in the American Column case every transaction of every member of the association was immediately brought to the attention, automatically, of every other member, so that every member was operating under the knowledge that whatever he did immediately became public to all his competitors. Here it was only public if he wanted it to be [fol. 12433] public. There was no compulsion. The sole way in which he knew of what someone else did was if that someone else wanted him to. Moral sanctions, in the one case, are almost inevitable, as the Court pointed out; in the other case they are impossible, because all the member has to do to avoid the possibility of moral sanctions is to stop giving his figures to someone else, and that was perfectly possible for him, and Mr. Dugan testified it was done. I submit there is no similarity whatever between this case and American Column & Lumber case.

Mr. Apsey recognized that in part when he said Mr. Ackerman testified that whatever adherence there was to these quotas was testified to be voluntary, and then he said, under the Interstate Circuit case,—at least so I understood Mr. Apsey to say,—that if there was any adherence, if there was any acceptance of these quotas, that would be concerted action. Now, the only proof on that point is that there was no adherence, and of course that is the best answer, also, to the so-called moral sanctions argument. The little companies were all over the lot. These quotas, as shown by the figures, did not effectuate stabilization. Of course if they were going to be inforced by moral sanctions of the statistical committee, as the government argues, it would be natural those sanctions would

be applied to the smaller elements in the industry, which is precisely those companies showing two hundred, three hundred, and four hundred per cent increases in the amount [fols. 12434-12493] of business they did.

I submit, Your Honor, this was an attempt, a good faith attempt, to comply with the rules and possibilities laid down in the Maple Flooring case of the innocent individual action by facts and figures and economical principles, without agreement, without any provision for agreement, without any coercion or provision for coercion. At the time of the Code they tried to get, as the Code demanded, an actual agreement. The companies would not make it, only six or seven companies agreed to their percentages. That showed the futility of the whole thing. They had tried at a time when they thought it was legal to get an agreement and they couldn't do it, the thing became a dead-letter; from that time on the figures published by the Code Authority continued to be published, and nothing has happened, and the whole matter was abandoned since July, 1939.

The Court: I think we better recess till 2 o'clock.

(Recess taken.)

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RULING

[fol. 12494] The Court: Now, in connection with the [fol. 12495] Anchor-Hocking matter, I think so far as the Court is concerned that has been the hardest problem before the Court. The motion of the Anchor-Hocking is for the discharge of the defendant corporation, as well as the discharge of some five or six individuals who constitute its officers and directors, viz: Isaac J. Collins, J. D. Dilworth, W. V. Fisher, T. C. Fulton, Herman Krannert, V. E. Macy, Jr., J. H. Moffett, Ernest Stauffen, Jr., L. B. Williams, J. O. Deegan, B. E. Factor, C. D. King, H. J. Carr, H. C. Laughlin, H. J. Hamlin, and F. B. Schlub, and each of them.

There has been a lot of evidence, the record is replete with a lot of steps taken by the Hocking Company up until its affiliation with Anchor Hocking and various acts are charged during the course of quite a number of years of the violation of the Anti-trust Act, the onus of which is sought to be cast upon the shoulders of the present Anchor-Hocking Glass Corporation.

The Hocking concern, as I recall, was organized back as far as 1906, and Mr. I. J. Collins has been its president for a great many years. Mr. I. J. Collins seems to have been a busy man, and along about 1929, he, having become a stockholder of the Monongah concern, decided that he would become its president, and was thereupon named its president. Some time thereafter the Monongah concern gave up the ghost and was taken over and its assets taken over by the Turner Company. The Turner Company was a company in which Mr. I. J. Collins had some stock, and [fol. 12496] Mr. Collins became a director on the board of the Turner Corporation, about 1930, and proceeded to exercise his authority as a member of that board. The Turner Corporation, however, in the space of four short months, went into the hands of a receiver and was sold out through the Federal Court at, I believe, Indianapolis. There were negotiations that are claimed to have been vicious, over a period of years, between Mr. I. J. Collins and Mr. Mandeville, of Thatcher, seeking a combination of the Thatcher and the Hocking interests for the purpose of combining their efforts in the glass making industry. There was some effort made that resulted in the organization of the General, at the time that Turner gave up the ghost. And Thatcher and Hocking each agreed to supply half of the capital in the organization of General, which took over the assets of Turner, and possibly some remaining assets of the Monongah,—I don't just recall at this time. At any rate, after General had operated for a while and apparently required large sums of cash over a period of time in its operation, some sort of a suggestion was made one day by Mr. William E. Levis to Mr. Collins. I find no indication that a firm offer was made, but the psychological effect was there of the sum implanted upon the mind of Mr. Collins, that perhaps the sum of $750,000 would buy his half-interest in General. Whereupon Mr. Collins approached Mr. Mandeville, of Thatcher, and said, "Now I believe I am prepared to pay you $750,000 for your half of Thatcher", whereupon Mr. Mandeville said "fine", and [fol. 12497] Mr. Collins found himself in possession of General. Thereupon the Thatcher concern reaped a profit after taking what it had invested in General of $510,000. Now, I see no harm in that so far as Mr. Collins was concerned. I don't see he violated the law in any way by that

sort of transaction and I don't know that any law was violated so far as the law of the land is concerned, in the course of that transaction. Anyhow, following that, the problem came up of a combination of the Anchor Hocking and of the Anchor Cap Corporation that was in control, as wholly-owned subsidiaries, of Capstan and Salem as manufacturing agents.

Now, the mere fact that Mr. Levis introduced Mr. Stewart or some member of the board of directors, I believe Mr. Dilworth, to Mr. Collins, in the course of that transaction, is no indication to me there was any violation of the Sherman Anti-Trust Act there. At any rate that combination was made. It was not a combination of competing industries as such. I can see no violation of the law, in that there was an illegal merger of those particular concerns. So I can find no violation there.

Now, the present Anchor-Hocking concern is the outgrowth of that combination, I think in 1938, and Mr. I. J. Collins is the president of that new concern, which now is a concern operating the Capstan and Salem Companies and the Anchor Cap Company, which is not a glass-making concern, the remnants of Monongah and of Turner and of [fols. 12498-12501] General, and of course, the physical body of the Hocking concern. It undoubtedly is a very large corporation now, but I cannot find in the course of studying the history of these various transactions that so far as this corporation, the Anchor-Hocking, is concerned, that there has been any violation of the law by it, and I cannot bring myself to believe that any alleged violations of the law on the part of Capstan or Salem, or in the collapse of Monongah and Turner, are inherited and cast upon the shoulders of the present Anchor-Hocking Glass Corporation.

Therefore, I think so far as Anchor-Hocking Glass Corporation is concerned, and so far as its officers and directors are concerned, save with the exception of Isaac J. Collins, that the motion ought to be sustained. I think that so far as the Court is concerned, he has a duty to retain Isaac J. Collins as a party defendant in this case. I think the record justifies the Court's retaining Isaac J. Collins as a party in this case until such time as the Court has concluded the case. If the Court feels that some relief is due from the Court eventually as against certain

defendants in this case, he may feel that same course might necessarily be followed with relation to the future activities of I. J. Collins.

The other motions are sustained, so far as the Anchor-Hocking and the other defendants are concerned.

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[fol. 12502] ARGUMENT AND RULING ON MOTION OF THE BUCK GLASS COMPANY

(Transcript of hearing held at 10 A. M., Wednesday, May 13, 1942.)

The Court: The matter this morning is the presentation of a motion of the Buck Glass Company, and others, in connection with the case of the United States vs. Hartford Empire Company, et al., No. 4426, for leave to have Walter H. Buck, Esq., to appear as a friend of the court and to participate in the oral and, I presume, the written argument in the case. How long a time do you want to present this argument?

Mr. Walter H. Buck: This morning?

The Court: Yes.

Mr. Buck: All I want to do is read the motion, if your Honor please. Shall I do so?

The Court: You may do so. I was thinking if counsel have any argument to present for and against the motion, I think perhaps thirty minutes on the side ought to suffice.

Mr. Buck: I have no desire to argue at any length. I want to present the motion for whatever your Honor thinks fit. If your Honor feels it goes to the question of remedy and I can be of any help to the court, all right.

Your honor has the written papers before you?

The Court: I have the motion here, yes.

[fol. 12503] Mr. Buck: (Reading.)

"To the Honorable Frank L. Kloeb, the Judge of said Court:

"The Buck Glass Company, a Maryland corporation; Latchford-Marble Glass Company, a California corporation; Maywood Glass Company, a California corporation; Northwestern Glass Company, a Washington corporation; Chattanooga Glass Company, a Tennessee corporation; J. T. & A. Hamilton Company, a Pennsylvania corporation;

Laurens Glass Works, Inc., a South Carolina corporation; Maryland Glass Corporation, a Maryland corporation; Universal Glass Products Company, a West Virginia corporation; The Diamond Glass Company, a Pennsylvania corporation; T. C. Wheaton Company, a New Jersey corporation; Foster-Forbes Glass Company, an Indiana corporation, and Pierce Glass Company, a Pennsylvania corporation, move this Honorable Court for leave to have Walter H. Buck, Esq., of the Baltimore Bar, their Attorney, a member of the Bar of the Supreme Court of the United States and of the Court of Appeals of Maryland, to appear as amicus curiae herein, and to participate in the argument and in the filing of briefs in the above entitled cause. The interests of the parties to this motion are as follows:

"1. That all the parties to this Motion are engaged in the manufacture and sale of glassware throughout the United States.

"2. That the complaint was filed herein for relief against [fol. 12504] the defendants under the Act of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act, and under Section 3 of the Act of October 15, 1914, entitled "An Act to Supplement Existing Laws Against Restraints and Monopolies and for Other Purposes," commonly known as the Clayton Act. That practically all the defendants herein are engaged either in the manufacture of glassware, the manufacture of machinery and equipment used in making glassware, or in the leasing or licensing, whether or not under patents, of the machinery used in such manufacture.

"3. That the complaint seeks among other relief the virtual or actual dissolution of the defendant, the Hartford-Empire Company, which said company has the plant and the extensive technical research and experimental departments whereby it is enabled from time to time to supply and to keep supplied to the parties to this motion and to others the most modern and economical glass-making machinery and equipment and the technical service for the installation and proper functioning of the same, and said defendant company is also engaged in the leasing or licensing under patents of said machinery and equipment, and

the parties to this motion, not being defendants herein, oppose the dissolution of said defendant company for the following reasons:

"(a) That in order for glassware manufacturers to keep [fol. 12505] their plants in a competitive condition, it has been found necessary within the last two decades to re-equip their plants with more modern machinery and equipment a number of times.

"(b) That all the parties to this motion are what may be commonly termed 'medium-sized and small' business enterprises in the glass industry, and by reason of that fact none of them can or does maintain the technical research and experimental departments necessary to keep their plants supplied with modern machinery and equipment, but rely exclusively upon the defendant, the Hartford-Empire Company for such services.

"(c) That, however, certain of the larger glass manufacturers, defendants herein, are able because of the volume of their business to maintain and do maintain the technical research and experimental departments necessary to keep themselves constantly supplied with all the newest and best methods in the manufacture of glassware.

"(d) That if any decree entered herein shall have the practical effect of destroying or in any way substantially interfering with the services now rendered by the Hartford-Empire Company, defendant, to the parties to this motion and to others, the result will be that within a few years the medium-sized and small glass manufacturers, including the parties to this motion, being unable themselves to supply such extensive services and to obtain such services as are now supplied to them by the defendant, the Hartford-[fol. 12506] Empire Company, will be unable to compete with the few large glass manufacturers, who, as aforesaid, are able to supply such services for themselves, and thereby the petitioners herein will be gradually forced out of business, and a few large manufacturers will have a virtual monopoly of the glassware business in the United States through no fault or act of their own.

"Wherefore, your petitioners move this Honorable Court as aforesaid."

Now, if Your Honor please, all I wanted to do was to read the motion. And referring to Paragraph 9 in the prayer

for this break-up of the Hartford Empire Company, that reads as follows:

"(9) That the defendant Hartford-Empire Company be dissolved and that its patents and other properties be rearranged under several separate and independent corporations, independently owned, in such a way as will terminate effectively the aforesaid monopoly or monopolies and prevent further violations of the Sherman Antitrust Act."

Now, on the question of the violation of the Sherman Act, I have nothing to say. I am not interested in that point. I am interested in telling your Honor this, when the time comes, if it does come, for a decree against these people, I would like to be heard on the question of remedy. It may be I cannot do anything to help the court or to help the [fol. 12507] people I represent, but I will do my best.

May I say, Your Honor, I organized many years ago the Buck Glass Company, in 1909, I think it was. It is a curious thing that that concern was founded by an Ohio man, a man named Nivison, and a lot of journeymen who had saved up quite a little money and came to Baltimore and built that plant, and they lost everything they put into it. I bought the plant at a mortgage sale many years ago. The plant got under way, my two brothers running it, it had all sorts of difficulties, finally got to going pretty well, then came along these patents owned by these big concerns, and the company attempted to meet that situation with this semi-automatic machinery which, for a while, was fairly successful, but in the end it couldn't compete, and after they got the Hartford machines they were able to build up a decent business in Baltimore.

Now, these other people have come to us through Mr. Blunt, of the Buck Glass Company. I know nothing of them except through that; and they have all agreed they are all in about the situation of Buck Glass Company—they are making glass; they are making cheaper glass; they are in competition in the industry, and while my brothers on the other side, if they are successful, may claim ability enough to devise a plan by which this concern can be cut up and still may function, if Your Honor please, I doubt that can be done, and I would like very much, if [fol. 12508] Your Honor will permit me to do so at that time, to be heard just briefly. I promise Your Honor when

I argue in court I don't take much time, but I would like to be heard. That is the reason I filed the motion.

The Court: I have noted this in your motion. You have moved the court to agree to have Walter H. Buck to appear as a friend of the court "and to participate in the argument and in the filing of briefs in the above entitled cause."

Mr. Buck: Yes.

The Court: Now, whether your argument is oral or in writing, under the present situation, how could you present an argument either orally or in writing and remain within the record?

Mr. Buck: I didn't understand Your Honor on that.

The Court: How could you present an argument now, orally or in writing, and remain within the record?

Mr. Buck: Within the record? I couldn't present an argument until I saw what the proposed plan is; then I can present one.

The Court: What I am directing your attention to is that the motion now asks the court for leave for you to appear as a friend of the court "and to participate in the argument and in the filing of briefs in the above entitled cause."

Mr. Buck: Yes, sir.

[fol. 12509] The Court: Now, assuming that leave were granted and you were to file a brief this month by the 1st of June, how could you argue within the record?

Mr. Buck: I wouldn't want to file a brief on the first point, if your Honor please, until after your Honor has made up his mind on the case.

Mr. Isseks: If anyone else is going to argue in support of the motion, I suggest they argue now so it will avoid the necessity of my arguing twice.

The Court: No request has been made. I hadn't thought of that. Is there any other proponent of the motion who desires to say something?

Mr. Isseks: Your Honor, the Government opposes this application. Your Honor has already indicated one ground of the Government's position, namely, that there is nothing in the record as to which the applicant could direct himself to.

Your Honor will recall that in November of 1941 counsel for Hartford-Empire put on the stand the former president of the Diamond Glass Company, one of the movants, and in connection with testimony offered through that witness,

counsel for Hartford, after the Government objected, offered the testimony in connection with the remedy to be adopted by your Honor, if your Honor finds for the Government, that Hartford constitutes an illegal monopoly. And at that time your Honor in rendering an opinion, on November 17th, stated that it was untimely to take such [fol. 12510] testimony, and your Honor suggested, at pages 7585-7586 of the record, it might be time enough to consider that testimony after your Honor's ruling.

In view of the statement made by Mr. Buck that he doesn't want to confine himself to the record, I submit at the present time his application should be denied because he cannot make any argument or file any brief within the record that is before your Honor, since your Honor excluded certain testimony offered through Mr. Van Bibber and others.

Another reason for denying the motion is this—certainly Hartford-Empire Company, with its very eminent and very capable counsel can argue all the points that may possibly be raised by counsel for these movants and, equally clear, eminent counsel for the Glass Container Association, of which either all or most of these movants are members, could make all conceivable arguments that could be made on behalf of learned counsel who appears before your Honor.

The third, your Honor, and probably a most practical reason for denying the application is that the application is made on behalf of thirteen licensees. Where are the other seventeen or eighteen or twenty? If these thirteen are permitted to come in for any purpose whatsoever the other seventeen may come in, partly in opposition to the position taken by the movants, partly in favor of the position taken [fol. 12511] by the movants, and perhaps partly in an intermediate position.

I have in mind, your Honor, that Glenshaw Glass Company now engaged in litigation with Hartford, may wish to come in and appear as friends of the court. Similarly, Brockway Glass Company, engaged in litigation with Hartford, may wish to come in and appear as friends of the court. We have not communicated with all these other licensees to find their attitude in the matter. The Government's position is that we represent the interests of the public generally and we represent all interests and are interested only in that which will protect the public in toto.

I also wish to point out that other people who are not licensees may offer to appear as friends of the court. A long time ago counsel for Mr. Kucera suggested they file an application for leave to intervene on the same side as the plaintiff. We told them we would oppose it, and they did not make the motion. I don't know whether Obear-Nester, another non-licensee, or Reed, would want to make application. Perhaps Turner Glass Company, which has filed a triple damage suit for a total of fifteen million dollars in Indiana in the last few months may wish to intervene. Perhaps some of those people who have made application for licenses in the last year or two may wish to intervene.

[fol. 12512] Our position is there is no necessity for intervention by anyone. The Government will protect the public, and we feel quite certain your Honor, if your Honor feels it necessary, will protect the interests of the public.

I wish to point out one other consideration. These thirteen licensees could have before the trial moved to have been permitted to become parties in this case on their own application. I cannot tell you what attitude the Government would have taken. They could have said they would like to come in and be party defendants so they could be heard. Had they done so, had your Honor allowed them, with or without the Government's consent, we could have examined and interrogated them and found out whether or not they were conspirators. Perhaps then they would have a standing in court. Having failed to do that they are in no position to intervene or come in as amicus curiae.

I wish to point out that licensees are not necessarily parties. We didn't make them parties. In view of the frank statement of Mr. Buck that he doesn't want to be heard on the record at this time in connection with the record before your Honor, and the problems your Honor has to meet when we come here at the end of June and argue, we believe that the motion should be denied in all respects.

Mr. Buck: I might say, your Honor, I am surprised that the Government of the United States would take such a posi-
[fol. 12513] tion as that. Let me repeat what you have said. Do you mean to say, counsel must know all the points on both sides, therefore my intervention is unnecessary. Is that your proposition?

Mr. Isseks: I suggest counsel address himself to the court.

Mr. Buck: You mean to say the Government of the United States would object to my appearing in June and listening to the argument? Do you mean to say if a decree comes down in favor of the Government that I could not sit here and have the benefit of those arguments of these great lawyers? To think that the Government of the United States, through counsel, should object to my filing this petition in here is a surprise to me. Surely the Government of the United States, if we can do nothing to help the Court, ought not to be worried about it. And if I took up too much of the court's time I guess the court would stop me. But to say I cannot come in, make a point I am not within the record, it seems to me for the Government of the United States to take that position is almost childish. I just cannot understand why I cannot be permitted to come here in June and listen to the arguments. Maybe I won't understand them, but I will say this about it, in these anti-trust cases, important as they are, a great many people won't understand them. Maybe I will get a good idea about them when I come out here. I will do my best, anyhow. I have practiced quite a long while, Mr. Isseks. I cannot see why [fol. 12514] a person, an honorable counsel, should be objected to to come in here and represent people. The expressions through this record here about giving them a drastic remedy, and that sort of thing—breaking this corporation up. I don't know what would become of it if they will go on. Maybe there is no chance for it but there may be some wonderfully subtle plan at the end that may be plausible and maybe I can show it will be unsound to the court. I ask the court to let me come in.

The Court: I hadn't understood, Mr. Buck, that Mr. Isseks in his argument objected in any way to your coming in here and listening to the argument the last week of June. I am sure the court would not object to it.

Mr. Isseks: We welcome Mr. Buck and anybody else. We would like to have an audience.

The Court: But I think so far as the present motion is concerned, I want to direct your attention again to the purpose for which the motion is filed.

The Buck Glass Company, et al., appears here to "move this Honorable Court for leave to have Walter H. Buck, Esq., of the Baltimore Bar, their attorney, a member of the bar of the Supreme Court of the United States and

of the Court of Appeals of Maryland, to appear as amicus curiae herein, and to participate in the argument and in the filing of briefs in the above entitled cause."

[fols. 12515-12516] Now, the motion is to permit counsel to appear here as a friend of the court for the purpose of participating in the argument. What argument? Well, the only remaining argument is the argument in the last week in June. To participate, not as a licensee, but to participate in the argument and in the filing of briefs. Now, the only briefs to be filed are the briefs that are due here on June 1st by the defendants. I again repeat, I cannot see how counsel could participate in the argument and in the filing of the briefs and keep within the record unless he base his argument and his participation, whether his argument is oral or in writing, upon the assumption that there is to be a division, a disintegration of the Hartford-Empire Company.

Now, that position, I think is untimely. It seems to me that the motion ought to be overruled, and that if after the briefs have been presented, the argument in, and the court has disgorged himself of an opinion, counsel feels that an argument on the question of remedy may be applicable, with his participation, then the question may be taken up.

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[fol. 12517] STATEMENT BY COURT AS TO MOTIONS AND AS TO FINDINGS AND CONCLUSIONS.

(At ten o'clock a.m. Friday, June 26, 1942, the trial was resumed.)

The Court: I think that it might be well, before we proceed with the argument, to take up certain motions that have been filed and are pending and undisposed of.

The Government, at page 2 of its initial brief, makes the following statement:

"With regard to the following individual defendants the Government deems the evidence insufficient to show a right to relief against them and, therefore, now moves to dismiss the complaint as against Arthur E. Ball, A. M. Bracken, Glen W. Cole, W. C. Decker, George B. Holister, John C. Hostetter, E. W. Jenkins, S. O. Laughlin, George D. Mac-

beth, A. L. Metzner, F. H. Mills, F. T. Nesbitt, H. W. Sherwood, F. J. Solon, John L. Thomas, and C. J. Wilcox."

I think that motion should be sustained. Those defendants should be dismissed as parties defendant.

There are pending two motions, one to dismiss the complaint against Mr. Reiman. Briefs have been filed in support and in opposition to the motion. The Court believes that the motion to dismiss the complaint as to G. F. Reiman ought at this time, to be overruled and that Mr. Reiman ought to be retained as a party defendant.

The motion to dismiss the complaint as to I. J. Collins I think at this time will be overruled.

[fol. 12518] There is a motion to reconsider the decision of the Court heretofore rendered on the motion of the defendant Anchor-Hocking Corporation for dismissal at the conclusion of the plaintiff's case. Briefs have been filed, extensive briefs, in support of that motion by the government and in opposition thereto by the Anchor-Hocking. Those briefs have been given careful study by the Court. The Court feels that he is not justified in changing his former ruling in sustaining the motion to dismiss the complaint as against the Anchor-Hocking Corporation, and so the motion to reconsider will be overruled.

The Court does feel that so far as the matters pertaining to Isaac Collins, J. D. Dilworth, W. B. Fisher and T. C. Fulton are concerned, that these defendants in connection with the Anchor-Hocking Corporation ought to be retained as parties defendant, and in the entry providing for the dismissal, sustaining of the motion as regards the Anchor-Hocking, the dismissal of the Anchor-Hocking concern, these four gentlemen shall be retained as parties defendant.

The Court desires to say at this time that under the provisions of Rule 52-A, findings of fact and conclusions of law are required on the part of the Court. The Court has followed the policy chiefly in tax cases in past years of permitting opposing parties to prepare and file their version of findings and conclusions for the consideration of the Court on the submission of the case. I believe that to be a good policy and to be workable in this case. The Court desires to prepare his own findings and conclusions but he desires the assistance of counsel on both sides of [fols. 12519-13063] this case and representing all of the defendants, if they care to so assist; therefore, all the par-

ties are invited within ten days after the conclusion of this argument, to submit to the Court their version of findings and conclusions so the Court may have the benefit of them.

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[fol. 13064] FINAL ARGUMENT FOR GLASS CONTAINER ASSOCIATION, ET AL. (2:00 o'clock p. m. Wednesday, July 1, 1942.)

The Court: You may proceed.

Mr. Day: If the Court please, I want at the outset to thank the Court in behalf of all of the lawyers in this case, for the courtesy, the impartiality, and the patience you have exhibited throughout this trial. I wish also to express my appreciation to counsel for Thatcher for trading their time of argument with us. And if it has not been done before, I want, in behalf of the members of the Ohio Bar who are in this important case, to say to the lawyers from outside of Ohio how much we have appreciated our association with them. I make that statement and expression applicable to the lawyers on both sides of the trial table. Win, lose or draw, I think we will all remember this case as an occasion of happy, pleasant professional association.

We made a motion to dismiss this case at the end of the plaintiff's case. That motion was overruled by the Court. In overruling that motion, Your Honor said, and this is at page 11,260 of the record:

"So far as Glass Container Association is concerned, the motion of the Glass Container Association goes to the corporation itself, to Charles R. Stevenson and Emery G. Ackerman, and each of them. I am of the opinion, so far as this motion is concerned, that it ought to be overruled. I think that the Glass Container Association, being the child [fol. 13065] of the Glass container manufacturers, including those who are perhaps defendants in this suit, ought to be retained as a party defendant in this suit until its conclusion. I think the Court ought to retain jurisdiction over it and over Charles R. Stevenson and Emery G. Ackerman. Therefore, that motion will be overruled. I do so, as I indicated at the time of the arguments of counsel,

chiefly upon the questions of the maintenance of quotas and forecasts before and after the inception of the NRA, and its conclusion, and the apparent efforts of the defendants to contract the industry, and cooperate, if possible, in the prevention of expansion of the industry. On those two issues the Court feels that he ought to retain these defendants as parties in the case until the conclusion of it."

We do not regard the ruling of the Court on that motion as decisive of the question to be ultimately determined here. We believe that the Court thought at the time that the motion was submitted and argued that there was evidence in the record, upon the question of prevention of expansion of the industry and keeping newcomers out, sufficient to warrant Your Honor in holding us in this case until the time came, which has now come, when Your Honor is faced with the responsibility of entering judgment in this whole case, upon consideration of every phase of it, and with relation [fol. 13066] to every defendant, including the defendants we represent.

Something has been said about Your Honor's expression that the Association was a child of the industry. The government seems to take considerable comfort in that expression. Of course, what Your Honor meant, nobody but Your Honor knows; but it does not mean to us that Your Honor meant to indicate that you were then finding or determining that the Association, or either of the other defendants, were parties to the conspiracy charged.

What we think Your Honor had in mind was that here was a case that involved the glass industry, the big companies in the glass industry, the officers of those companies who were also connected with the Association; and that the Association was a child of the industry in the sense that it was an organization that had to do with the conduct of certain of the business of the industry; so closely connected with the industry and with certain officers of its own who were officers of other big companies in the industry and in the Association, that Your Honor felt constrained at least to hold the Association in the case until you came to the time when you made a final disposition of it.

I am not going to argue in any great detail the matters which we argued upon the motion. I do want to say something about those issues because now is the time when we [fol. 13067] have the last opportunity to be heard in behalf

of our clients upon those issues. We have come to the time now when it is not a question of whether or not there is any evidence to hold us in; but when the question is presented of whether or not there is sufficient evidence, under the law, to warrant the entering by the Court of a judgment against us.

Upon the question of keeping newcomers out, it is charged that we were in conspiracy with Hartford to that end. Something has been said about that by Mr. Goodrich in his very able presentation of a portion of Hartford's case yesterday.

It is said in the brief of the government that we became a party to the conspiracy, as I recall it, in 1924. It is said in the complaint that we became a party to the conspiracy in 1928.

The first Pease-Ackerman letter, which is introduced in evidence here as Exhibit No. 476, was written January 14, 1933, nine years after the year when the government now says we became parties to that conspiracy; five years after the time when they say in their complaint we became parties to the conspiracy.

There are two paragraphs in that letter which demonstrate beyond any question that at the time it was written, there could not have been any conspiracy between Hartford and the G.C.A. The first paragraph follows:

"From time to time we have inquiries for equipment in [fol. 13068] connection with establishing new glass plants. Needless to say, due to the overcrowded condition existing in the industry today, we are reluctant, and, in fact, refuse to license new tonnage."

Continuing from the letter:

"It occurs to me that your Association is in a position to do some good work along the lines of discouraging new interests from entering the glass business."

Continuing further in the letter:

"Maybe your organization has made a practice of treating inquiries along the lines we have. If so, we feel that such a policy is constructive, at least at the present time, though we have never had firsthand, exactly what your policy has been or is in connection with newcomers into the Glass Container field."

That is a letter which could not have been written if there had been an understanding, conspiracy or agreement before it was written between the Glass Container Association and Hartford upon the subject of keeping newcomers out.

Mr. Ackerman, one of the defendants, testified in this case. Considerable has been said about his testimony. He was a very frank witness, as perhaps Your Honor will recall. An attempt is made here to distort his testimony into the interpretation that he admitted that it was the function [fol. 13069] of the Association to keep newcomers out. The proper interpretation of his testimony, however, is that all that he did by way of keeping newcomers out of the industry was to give to those newcomers the facts in the situation. If the facts or statements of the facts served to keep the newcomers out, they stayed out. There is no evidence in this case that Ackerman ever made a misrepresentation of any fact to any newcomer, or prospective comer, into this glass industry. There is no evidence that he ever did anything except to tell to them the truth.

It was a function of the Association to answer inquiries of that kind. It was a function of the Association, if a newcomer wanted to come into the business and asked what the facts were, to tell him those facts. What else could the Association do? If there was an over-production, an overcapacity with relation to production, I should say; and a newcomer wrote into the Association, said he was about to go into the glass business, wanted to invest money in the glass business, and wanted to build a plant and start up a new business, the Association could not very well refuse to answer that letter. And if the Association did nothing more than tell that newcomer the facts, it was certainly within the law. I repeat that upon this record there is not the slightest intimation that Ackerman ever did anything but give to those newcomers, in response to letters of inquiry from them, the facts, and nothing but the facts.

[fol. 13070] It is said that we attempted as an Association to prevent expansion of the industry. The undisputed record is that the industry has expanded. It has expanded as a whole throughout all of the years involved in this case. More than that, there has been an expansion in business by the small companies and by the middle companies, much greater in proportion than the expansion in business of the big companies.

Is it conceivable if the big companies, through the medium of this Association, sought to prevent expansion in the industry, that over the period of the twelve or thirteen or fourteen years here involved, we would have a situation presented wherein the little companies have grown, the middle companies have grown, much more in proportion than the big companies? The same spirit, if Your Honor please, if it existed, which would prompt the big companies to keep newcomers out, would prompt the big companies to keep the little companies and middle companies down; and the fact that the undisputed record shows that the little companies grew, and the middle companies grew, much more in proportion than the big companies grew, tends to show that there was no conspiracy, no policy upon the part of the Association to prevent expansion.

Mr. Rose is going to discuss when I get through, if he has time—and I am sure he will and still keep within the limits Your Honor has set—some of these questions in the [fol. 13071] light of the new evidence which has been offered here, which was not considered by Your Honor in passing upon our motion to dismiss.

I want to say a word about the quotas which have figured so largely in this case. It was not unlawful for the Association to circulate the information it did circulate before 1939, when they stopped the kind of forecast, stopped circulating the kind and nature of forecast, which had theretofore been circulated.

It was not unlawful for this Trade Association to give statistical information to its members, even though the giving out and receipt of that information by the members might tend to stabilize the industry. I think that was decided in the Maple Flooring case, and other cases perhaps, cited in our brief. If the effect was to stabilize, but if the stabilization was the result of the Association doing something by way of circulation of statistics that it had a lawful right to do, then there is no violation of the Anti-Trust laws, even though the tendency might be and was to bring about a stabilization in the industry.

There is no evidence of coercion in this case. There is no evidence that any member of this Association was ever coerced to abide by his quota. There is no evidence in this record that any pressure, any heat, was ever put on any member of this Association because he did not abide by his quota. This case covers a long period of years. Is it con-

ceivable that if the quotas were being used pursuant to an agreement to enforce them, and, by enforcing them, to re-
[fol. 13072] strict production, we would not have in this voluminous record, and in the taking of testimony over weeks and months, a single instance of the actual putting on of pressure to enforce and bring about and coerce an adherence to the quotas?

Each member was left to exercise his own judgment. He got the forecast, got the statistics; he knew the conditions in the industry. It was up to him to decide what he should do. The giving out of that information, the advising him of his position with regard to the industry as contrasted with his own business, was not unlawful, under the settled law announced by the Supreme Court of the United States, unless there was something of agreement and coercion and pressure; and there was nothing of that kind here.

Something is talked about moral sanctions. They say something about moral sanctions in the brief of opposing counsel. There is no evidence of the application of moral sanctions here. There is no evidence, by the use of the quotas, of any attempt to coerce any little fellow in the industry to stand by his quota and to not exceed it.

As to quotas, I think this testimony divides itself into three fields. There is the experimental or pre-code period. There is the period of 1933 to 1935, until after the decision in the Schechter case, which we will call the code period. There is the post-code period.

During the Code, there was an attempt made to have what amounts to quotas or allotments enforced in the indus-
[fol. 13073] try. During all that time there was no ability to come to an agreement by the members of the Association and companies here involved upon the subject of quotas.

After the Code was declared unconstitutional in the Fall of 1935, there was some talk of reviving,—not the Code, but of reviving or continuing in operation some system which would be similar in effect to the system under the Code. That never was successful.

There have been letters introduced here which they say tend to bear out their contention that the quotas and forecasts and allotments were something that should be enforced, and were considered by the members of the industry as being something to be enforced.

Those letters are the isolated, sporadic communications of officers of certain companies, who belonged to the Asso-

ciation. Some of them were on important committees of the Association. They were not expressions by those officers in their official capacity as officers or agents of the Association. Some letter would refer to an allotment. Another letter would refer to a quota. Some letter would refer to a forecast. One letter, I remember, says, what we are buying is a quota.

There might be an interpretation, by the most strained construction it seems to me, placed upon one or two of those letters, indicating that the quota was something to be enforced. But the interpretation to be placed upon those one or two letters, and all of the letters; the more sensible [fol. 13074] interpretation is that the quota was just something which we say it was: something consisting of information which was given to the members, that they could use as they saw fit.

Is it not rather remarkable, if Your Honor please, that upon the question of expansion of the industry and also upon the question of the quota system, the keeping down of production by the quota system, that over all the years involved in this lawsuit, with the government having asked access to all of the letters, all of the communications, that bore upon the subject; with the government having access to all of the minutes of all of the meetings the Association ever had, that there have not been produced here more than a few isolated letters written by officers of the companies that belonged to the Association? In other words, the fact that the government can point to so few letters and communications in support of their position, tends to show that the facts are not as they claim them to be.

Mr. Rose is going to discuss some of the charts, and some of the additional evidence which we introduced upon this question of quotas; and in connection also with the issue of keeping newcomers out of the industry.

This is an injunction case. It is an action in equity. The fact that the government is the plaintiff does not make the case any different than if I were the plaintiff or any other individual were the plaintiff. The duty of estab- [fol. 13075] lishing the issues here tendered and asserted by the government by a preponderance of the evidence, or, perhaps, as suggested this morning by Mr. Philbin, by clear and convincing evidence, is upon the government: just the same as it would be upon me, if I were seeking an injunction in a case I had against some other individual. The govern-

ment has the duty of showing, as to keeping newcomers out, and as to keeping down production by the quota system, some present existing injury to the public, or some threatened injury, which requires action now by a court of equity to restrain.

Does the record show that the Glass Container Association was ever a party to the conspiracy here charged? Frankly, from the beginning of this case until now I have never been able to see how the evidence shows that the Glass Container Association and affiliated defendants are, or were, parties to the conspiracy charged by the government in its bill of complaint. The conspiracy has to do with a monopoly in patents, a monopoly in glassmaking machinery, and in glassware. The lawyer who closed for the government said that the conspiracy here charged was the conspiracy which had for its basis and inception the taking out of patents for the purpose of controlling the industry. Is there any intimation in the record that the Glass Container Association was a party to any such a conspiracy?

We do not have here the charge of two separate and [fol. 13076] distinct conspiracies. We do not have here an instance in which the Glass Container Association is charged as being a party to a conspiracy by itself with its members, or in which its members are charged with being in conspiracy with each other. The conspiracy charged here is that the Glass Container Association was a party to this general conspiracy with relation to patents, glass-making machinery, and glassware. I say there is not a scintilla of evidence in this case connecting the Glass Container Association with any of the important steps, with any of the important acts, upon which the government relies in making out its charge of conspiracy against the defendants.

What is my authority for that statement? Last Friday, chief counsel for the government, in what I thought was a very able and complete presentation of the government's side of this case factually, told the Court of the various acts and steps upon which the government relied in making out this charge of conspiracy. That was not the argument of an inexperienced lawyer. It was the argument of an able, experienced counsel, who has been entrusted by the government with the presentation of some of its most important cases: a lawyer with whom I am renewing an acquaintance in this case at bar. I first met him way out

in Los Angeles twelve years ago, when he was associated with that great American lawyer, the late Emory Buckner. I do not say that he should have stood up before this Court and argued in detail the facts concerning the Glass Con- [fol. 13077] tainer Association which were argued upon our motion to dismiss. The point I seek to make is that in the presentation to this Court of the various acts and steps upon which the government relies in making out its case, there was not a single act or situation mentioned to which the Glass Container Association was a party at all; not a one.

We had nothing to do with the Corning and Hartford-Empire transaction. We had nothing to do with the 1922 —if that is the right date—contract between Corning and Hartford-Empire; with the Owens and Hartford deals; with the Owens, Hartford and Hazel deals; with Lynch; nothing to do with Miller; Tucker, Reeves and Beatty; Howard; nothing to do with any of the alleged practices criticized as having occurred before the Patent Office.

Each and every act upon which he says the government relied is an act with which we were not, and could not have been, connected, because he made the point that secrecy surrounded many of those important acts and most important transactions. They were carried out, some of them, with such secrecy that their existence, their happening, was something which came out into the public light first, as I remember it, in the TNEC hearings in 1939.

Yet we are sought to be held as conspirators in a conspiracy in which every act outlined by able counsel for the government is an act we did not have anything to do with [fol. 13078] at all, and, for a very great part, did not know and could not know anything about it.

Then associate counsel argued upon the basis of milk bottles. There was no mention of us in the conspiracy in so far as it related to milk bottles. There was no mention of us in the argument as to conspiracy in so far as it is alleged to have related to fruit jars.

There was mention of us in the closing argument of Mr. Apsey. I am going to come to that in some detail.

If Your Honor please, this is an injunction case. The question presented is whether or not there is here some threatened injury to the public, upon our part, as a member of this conspiracy, of such a character as to invite and require action by a court by way of injunction. The undis-

puted evidence in this record shows that if we ever committed—as we respectfully and emphatically deny—any act of law violation, by doing something or being a party to something, to some practice or procedure, which was against the law, any act or step by us in that direction has been thoroughly abandoned, has ceased to exist, does not exist today, as it must exist today by at least a preponderance of the proof in order to invoke, at the behest of the government, action of this court of equity by injunctive process.

So far as newcomers are concerned, there is nothing of that kind that has occurred that was reprehensible for [fol. 13079] some years.

So far as the quotas are concerned, we have this situation presented upon undisputed facts. There never was an adherence to quotas. There was not an adherence to quotas before, during, or after, the Code. The undisputed record shows that.

In 1939, the Armstrong Cork Company questioned the legal validity of certain steps taken by the Association. As Mr. Underwood, of the Knox Company, rather picturesquely remarked upon the witness stand, after some investigations were had by lawyers of that company, it was found that some of the things we were doing in relation to quotas were in the twilight zone. We stopped. We discontinued.

If abandonment under the law requires an overt act, the overt act was committed by the absolute discontinuance of the forecast being sent out, and the substitution therefor of a new and radically different method of forecast.

At the time of the Armstrong Cork suggestion as to the legality of the quota system then in operation, we have this situation as to adherence in evidence, at pages 4 and 5 of our main brief; and government's Exhibits 1390 to 1485: Only 5 of the 27 reporting companies actually came within ten per cent plus or minus of their general line percentage forecast; 8 companies departed therefrom by more than 10 per cent and less than 25 per cent; 6, by more than 25 per cent and less than 50 per cent; 3, by more than 50 per [fol. 13080] cent and less than 100 per cent; and 5 by more than 100 per cent.

We have a record here where the system was never adhered to, where the same forecasts were sent out from the Code days of 1935 until 1939, the year when the question was raised by the Armstrong Company. The quota system,

as it then existed, was abandoned. That is the undisputed record in this case. That is the record, I respectfully submit, upon which Your Honor will determine this case upon that issue of abandonment.

What does the government say? They do not come in court and seek to meet the factual situation as it exists upon the undisputed evidence even though they have not any evidence at all to support the claim, they say to this court, well, the quota system was abandoned in 1939 because of the TNEC investigation. They are not willing to meet the undisputed factual situation here present; but they come in and say, oh, well, the TNEC was responsible for that.

The evidence shows, our new evidence shows, that we were not investigated at the TNEC hearings. The evidence shows perhaps, while investigators went around and looked at our files before the TNEC hearings were held, there was no reference, no attack made upon us at the TNEC hearings—which counsel say in their reply brief were not held for the purpose of criticizing anybody. The suggestion that the TNEC hearings prompted the action of the Armstrong Company is absolutely without foundation. [fol. 13081] The undisputed evidence is that if we ever did anything which was illegal, we stopped doing it in 1939; and there is no probability, there is nothing threatening now, to warrant the granting of injunctive relief in this case.

I want to come to Mr. Apsey's agrument. He made a very scholarly argument. I have been anxious ever since I started here some forty minutes ago, to come to the time when I might reply to it.

In the first place, he refers to the keystone letter—the keystone. I am not going to take the time to see what he says about it. I have the letter here. He says that is a very important letter. He says it is the keystone of their case upon the price leadership phase—not upon the whole case, but, as I understand him, upon the price leadership phase.

Many of the trial lawyers before Your Honor, especially those who have been at it for a good many years, as I have, can remember occasions in the years gone by, many of them, when we have sought to produce, to construct, to put our faith in keystones; to dig down into the hard solid earth of facts, and to find something with which to construct

an arch, representing the evidence upon which we rely, and a keystone for that arch. We have devoted hours and hours to that work, only to find that the keystone crumbles; and with it, many times, our hopes, in the face of a jury verdict or a court decree.

So when counsel for the government said he had dis- [fol. 13082] covered a keystone, I was kind of anxious and curious to know just what it was.

Here it is,—a letter which Mr. Philbin talked about this morning. In the first place, it is rather an old keystone, 1929: thirteen years ago. It is rather an old keystone upon which to rely as supporting the arch of evidence in a case where the relief sought is injunctive, the granting of which must depend upon proof of threatened or impending injury.

And then who fashioned the keystone? Why, Brother Hartley, of course. Your Honor, you have not forgotten that witness on the stand. I have seen a good many witnesses in my life. I have seen a good many that have got all of the better of me, to my client's detriment. But I think Hartley will go down in my memory book as one of the witnesses whom I shall never forget. He came in here and testified, came back and corrected his testimony, and then ended by writing a letter to the Court. Remember how many factories blew up or it was planned to blow up, in response to all these innocuous excerpts we confronted him with from the letter. I may be pardoned if I repeat what I said on the motion to dismiss. I was afraid to ask him what "yours sincerely" or "very truly yours" meant, for fear he might reply that it meant the annihilation of the entire glass industry.

When Hartley left, some of us thought we might never see him again. But I am not going outside the record or the proper limits of judicial notice when I say to Your [fol. 13083] Honor that some of us may meet him again in a lawsuit which the Turner Glass Company has filed in Indianapolis against most of the defendants in this case, seeking the moderate sum of $15,000,000.

What is this keystone, written July 18, 1929, thirteen years years ago:

"Fred Rummel was in my office yesterday and said that McNash, Levis and Whitehall had a meeting after the regular meeting of the Cost and Statistical Department and Stevenson found that his plan was right,—"

I don't know what the plan is—

"so Fred Rummel went to Toledo with Levis and then came here and after a three or four hour careful, analytical study, arranged that the industry would be helped if Mr. Levis would come out with a price list on all qualities and quantities, showing just exactly what they were getting for the products.

"Of course, Mr. Levis to see that the Owens-Illinois Bottle Company adhered strictly to that list, unless it is affected by competition, and then they would meet competition but not discriminate."

As Mr. Philbin said this morning, I cannot see anything particularly wrong in what he was talking about. There is no evidence that it was ever done or carried into effect. If it is admissible against the Association, it must be on [fol. 13084] the theory that Hartley was a member of the Statistical Committee, and, as such, even in a letter signed by the Turner Glass Company, by himself as president, the Association would be bound.

Continuing the exhibit:

"Personally, I think Fred Rummel firmly believes that this can be done; but he also tells me that Stevenson would like to do it the other way."

Stevenson wants to do it one way. His associates want to do it the other way. And then Hartley says, quoting from the exhibit, "I feel that the Glass Container Association is making progress." It is a little difficult to see, if the boss wants to do it one way, and the assistant boss wants to do it another, that the business in which they are engaged is making progress.

When the counsel for the government stand up in the closing argument of this important case and say that that letter is a keystone upon which they rely upon one phase of this case, I say it shows how little evidence the government really has in support of its case.

Coming to Mr. Apsey's argument, he says this; at page 11,413 of the record:

"I would like to say also that there is very grave danger in this case that the quota system and price tampering, which we have shown against the Glass Container Association, will be revived at any time."

[fol. 13085] "Will be revived at any time"—something which you say will be revived is something which is for the time being, and at the time the statement is made, dead, or at least dormant.

Continuing the quotation from Mr. Apsey:

"They have simply eliminated from their reports to their members the percentage forecast, and substituted in its place a five year record of the company, a five year record of the business of the entire industry, and the relation of one to the other: which gives a perfect basis of calculation from the average for the five years, to be a quota which the company should thereafter stick to. If this Court makes no effort to prevent this at the present time, moral sanctions, which are very hard to detect, can be applied at any moment;"—

Not that there is danger of applying them now.

This is an injunction case, requiring proof of actual existing, threatened injury; and the government is asking for relief upon the basis, not that what we are doing now is wrong, but that, even though we have abandoned doing that which they say is wrong, we should be enjoined; because, forsooth, at some future time we might start doing it all over again. I say that is not the basis for granting any injunction in any case.

After we prepared our brief in this case, we were notified by counsel for the government that they were going to [fol. 13086] ask in their reply brief that the Association be dissolved; to ask in their reply brief that the Association be dissolved, upon the basis that the Association was inherently bad; the Association was in its very existence and organization something that was illegal; so illegal that it should be enjoined; and, more than that, obliterated, annihilated, by dissolution.

There are very few cases in the books, as we have examined them, which support the proposition of the entry of a decree of dissolution in cases of this character; and the cases where that remedy has been sparingly resorted to, are cases where the Association or combination is such, because of its size or otherwise, that you cannot take the evil out of the combination without the absolute destruction of it.

Clearly, that situation does not apply here. This Association is engaged in a great, important work; in a great,

important industry. It has one hundred members; 35 of those, I understand, are glass companies. It was organized in 1919 and employs 15 or 20 people; has a budget now of $300,000. It is devoted to the advancement of the industry. It engages in important work, such as the standardization of caps and bottles, so that you can have a Number One cap that fits a Number One bottle,—a great advance in the industry; standardization of the size and shape of bottles; machinery for refilling bottles, or redesigning of bottles of lighter weight; has to do with matters or problems of trans-
[fol. 13087] portation; testing bottles; laboratory work; stimulation of sales; technical research. It is engaged in a great industry, serving a great industry. And I think Your Honor may very well assume that, in these dark, trying days in which we are now passing, this Association is doing its bit for a great industry, which we may assume is also seeking to do its bit.

They ask for the dissolution of the Association. I do not believe that any of the experienced and old lawyers in this case have ever seen; or the younger, able lawyers who are coming along and who are in this case, will ever live to see the asking of more devastating relief upon so little evidence as is presented here: the absolute wiping out, upon this record, this flimsy record which we say does not tend to substantiate the charges made by the government, of the existence of this Association of ours. And the suggestion is that it be wiped out by court decree without our ever having a chance, which they are willing to afford to Hartford, to be heard upon the subject.

I want to say to Your Honor in all earnestness that if that is considered for a moment, we want to be heard upon it. I think we can present facts which will show it will be against, rather than for, the best interest of the public to do any such thing.

Mr. Goodrich said he wanted to be moderate in the language he used. So do I. But I do not know how I can
[fol. 13088] characterize that request, as it occurs to me and my associates, except by saying that it is thoughtless, and it is childish, very childish, to seek that kind of relief upon this record.

[fol. 13089] Now, we think this case should be dismissed as to the Association, Mr. Stevenson, and Mr. Ackerman, who, as Your Honor knows, is not connected with the Association

but is with the Thatcher Company. We suggest in our brief, however—and we were reluctant to do it, and, of course, Your Honor from your experience not only on the Bench but at the Bar, will realize in submitting the suggestion we are not in any way lessening our position that this case should be dismissed—we make the suggestion that if we are to be held at all we might be held upon the basis that Judge Caffee held the defendant in the Aluminum Company case, where there was, as I understand, a doubt as to law transgression by them, where there is evidence of abandonment of the alleged illegal practices, and where the Court retains jurisdiction for a period of five years.

We are in an unusual situation in this case. We are in here with a great lot of defendants in a patent conspiracy case; if we are in it at all—which we do not believe we are—we are on the clear extreme edge of it, factually and legally. We are not only threatened by triple damage suits; one suit has been filed against us, in which a decree entered in this case, in this general mass conspiracy, might be used against us as prima facie evidence, even though we were only remotely connected with what is charged and what transpired. It seems to me if Your Honor doesn't see fit, as we believe you will, to give us a judgment of dismissal [fol. 13090] here, you might consider retaining jurisdiction under the circumstances I have attempted to relate.

I think I have taken just an hour, and I think Mr. Rose will take about fifteen minutes.

Mr. Rose: May it please the Court, I want to supplement what Mr. Day has said, particularly with reference to the quota, so-called quota charge and the charge on the part of the government that the G.C.A. has restrained the expansion of the industry, in the light of evidence which was put in the record in our defense, which was therefore not before Your Honor when you passed on the motion to dismiss. That evidence is largely statistical in nature and consists, first, Your Honor will remember, in our Exhibit 6080 to 6092, relating to the quota issue, and 6082 and 6083 relating to the capacity of the industry. They went into evidence by the testimony of the witness Hall, who is the present assistant business manager of the Association, and throughout the period of his employment there, has been in charge of the statistical work of the Association.

Now, first, on the so-called quota issue. Your Honor will recall that those exhibits were a series of charts and tabu-

lations supporting the charts, and if Your Honor hasn't them there, on page 6 of our brief. They have divided the companies in the industry into three groups—the small companies, medium sized companies, and the large companies. Then as to each company the year 1928 was taken as par, 100%, and the volume of glass shipped by that company from that time on until 1939 was related to its 1928 ship-
[fol. 13091] ments, in percentage, to show how it went up or down in relation to its then position. Not only was that done for the individual companies on the charts, which are our Exhibits 6084, 6087 and 6089, but also for these three groups of companies. The purpose of preparing those charts was to put in the record evidence from which Your Honor could determine the extent to which there was any tendency on the part of any of these companies to adhere to a fixed position in the industry, as answer to the government's allegation that the quota system was either a matter of agreement among the various companies or was a matter of moral sanctions enforced by the large companies against the small ones.

Now, as Your Honor will see, those exhibits demonstrate that precisely the reverse took place. Beginning with Chart 6091, immediately following page 6 of our brief, line A, which is the line representing the composite of the performance of the smaller companies, shows that those companies, shipping 100 per cent in 1928, totaled 240 per cent in the year 1939, an increase of 140 per cent. Line B represents the performance of the middle group, the medium sized companies, and shows almost identically the same performance, 240 per cent in 1939 of the 1938 volume. The next line, the heavy line, is the average in the industry, 154 per cent in 1939 of what the industry did in 1928. And the last line, line C, shows the performance of the large companies, 132 per cent in 1939 of what they did in 1928. [fol. 13092] In other words, the small companies and the medium sized companies showed an increase over that period of time which was four times and more as rapid as that of the large companies.

Now, turning to the individual charts which immediately follow, and which I shall not go over in detail, I think a glance at those charts will show Your Honor there is no such consistency of performance among the companies there represented as there must have been had there been an agreement to allot a definite percentage of the industry

to a definite company, or had there been in force moral sanction against the medium or smaller sized companies. For Your Honor will see there is no pattern to those lines, they are absolutely at random. I think those exhibits constitute positive testimony as distinguished from the inferences and insinuations that the government seeks to offer that the so-called percentage forecasts were purely a fictional system tried out during the Code days, found not to work then, and weren't adhered to, in fact no attention was paid to them subsequently.

Before leaving that I would like to deal briefly with two or three objections which the government makes to the bases on which these figures were developed. The first objection they make is that we left out small companies which were in business in 1928, or dropped out of business otherwise than by merger or acquisition some time during that period. Now, the exhibits themselves indicate what happened. I call your attention to Exhibit 6084, which is the second one in the charts, in the year 1934, you will see [fol. 13093] down toward the bottom of the page three lines end 17, 22 and 20. Those are three companies that went out of the container business in that year.

The Court: Their figures are in.

Mr. Rose: Are in, yes, sir. That is true of this group and the other group. Their figures are in as long as they are in business, and are dropped out when they went out.

The second thing the government makes objection to is with reference to the treatment given the large companies, and arises from the fact, as explained in the testimony, that in a case like Owens-Illinois or Anchor-Hocking, which resulted from a series of mergers and consolidations during the period, those mergers were reflected all the way back to 1928, and the government argues this distorts the result in such a way as to challenge or invalidate the information.

In answer to that I would like to state two or three things. In the first place, I would like to say we would have liked to have been able to correct for that factor but we didn't have the figures, as was explained on the witness stand. The statistics for the industry back to 1933 start from the survey made by the Code authority in that year. Of course what the Code authority was interested in when they made the survey was the past history of the then economic unit which it was dealing with. It therefore did not go into the his-

tory of the various prior components of that unit, they simply totalled the sales of the unit, and consequently we [fol. 13094] haven't the figures to split up clear back to 1928. Take for instance GCA-6091, the first of those charts. The major consolidation during the period would certainly not have affected the results of this presentation at all. Take for instance the consolidation because of the Owens Bottle and Illinois Glass, those figures as Owens consolidated, go back to the beginning; but had the exhibit been gotten up in the light of separate figures, had we had them, the line would be located exactly the same, because Illinois was a large company in 1928 and the Owens was a large company in 1928, and the broad illustration of these three groups of companies would not have been altered more than infinitesimally by the correction the government suggests.

Finally, I wish to point this out, take for instance the performance of the twenty some companies that are in the smaller group. They were in business in 1928, remained in business throughout, and they showed in 1928 about two and a half million gross, and in 1939 about five and a half million gross, which was six per cent of the industry in 1928, and ten per cent in 1939. Perhaps their competition in '39 was in somewhat fewer spots than it had been, but nevertheless those companies in spite of that did all right. That was what this chart was gotten up to show, the performance of those companies, the group of companies, in relationship to their total competition. As to that it is perfectly accurate and shows the situation as it is, just to the effect that the small and middle sized companies not only varied individually all over the lot, but as groups did better than the large companies, who are alleged by the [fol. 13095] government in these charges against us to have dominated the Association to the extent we applied sanctions to hold the small companies in line.

Now, if I might have a moment, Your Honor, I would like to talk to the issue of the capacity of the industry, and the charge we restrained it and held it down. At the time when Your Honor decided our motion to dismiss, there was in the record no evidence, no evidence in figures of what the capacity of the industry had been and what its production had been in relation to capacity. There have been statements by witnesses of the approximations, but there

was no detailed statement of the relationship. That tabulation also was put into evidence in the testimony of the witness Hall. That chart appears opposite page 4 of our brief, and compares the capacity, which includes the top line, the total capacity, including furnaces, which, while not active could be made active in a short period of time, and it shows the relationship of the shipments of the industry to that capacity. It shows that in only one year for the entire period did this industry operate at as high a ratio of its capacity as 60 per cent, all the rest of the time it was below 60 per cent.

Now, I have the figures on that in Exhibit 6083, that is the effect of the lines on this chart, and the figures supporting that statement are in Exhibit 6083.

In its reply brief the government doesn't deal directly with the ratio of industry operations to capacity during the [fol. 13096] period covered by the record. Instead it resorts to the present time, and goes outside of the record to cite an article in the American Glass Review for May 30 of this year, to base its statement that our policy of holding the industry capacity down has "now come home to roost" because we are operating on the basis of this article, at one hundred per cent of capacity, and therefore have no ability to take care of wartime increases. That statement is just plain not the fact, and it is shown not to be the fact by circumstances in this record. That article, I have it here, shows Glass Container Association figures of production, shipments, and so forth, for the industry for the last three years, 1941, '40 and '39, and the first four months of 1942. It shows production of about 70 or 71 million gross in the year 1941, and it shows the production in the year 1942 for the first four months, which is all that is covered there, at a rate which if continued for the year, would result in an annual production of about 92 million gross, if the increase over the first four months of '42 over '41 were maintained throughout.

Now, compare that, assuming that to be true, compare that with the capacity data already in this record, and with this chart, Exhibit 6082, that shows a capacity at the end of the year 1939, over-all capacity of about 68 million gross annually, but the testimony of Mr. Hall was perfectly clear to the effect that was calculated on a 280 day year, [fol. 13097] Sundays out, holidays out, thirty days down for repair. Of course no industry is operating like that in

this emergency period about which the government speaks. If you take the 20 per cent more capacity, which means working seven days a week and holidays, forget any shutting down time, the capacity at the end of 1939 was 103 million gross, or ten million more than indicated at the high rate of production of this article, on the basis of which the government says we are operating so full we cannot take any more. The fact of the matter is, of course, that the statement of one hundred per cent operation, of 102 and 103 per cent operation, is in relation to the normal capacity of the industry, working as many days as it does in normal times. So that not only are we not up to our capacity, we have still ten million more gross on the basis of 1939 figures against 1942 production; and the situation is still more favorable from the standpoint of taking more production than that. Because, as Your Honor knows, the requirements of this industry for rubber and tin for closures for bottles are substantial. The War Production Board, with jurisdiction over those things, has, of course, restricted very drastically the extent to which rubber and tin would be favorable. In the last few months orders have come out which cut down the ability to purchase certain types of things in order to conserve those items. In fact, the last development was an application by the Committee of the industry to the War Production Board for additional allocation of tin and rubber to make 22½ million gross of [fol. 13098] containers which the industry has the capacity to produce but which it cannot get patents and closures for.

Far from the industry being not in position to take care of wartime demands, it has done what I think is the outstanding job of carrying excess capacity to fit itself for just such a situation. Consider, Your Honor, that it is in competition with the tin industry, the tin can industry, which is three or four times as large, depending upon whether you take units or dollar volume. Tin, of course, is a critical war material. There has been a tremendous pressure on the glass industry by reason of that fact. Here it has arisen from a peace time high productivity of 50 million gross, last year 70 million, this year indicated 92 million, and down in Washington asking for more raw materials to permit the use of further capacity which it has and is not using—not because it cannot produce glass but because it cannot get anything to close it with.

I submit, Your Honor, the evidence in this record indicates the capacity of the industry has not been restrained, and I wish to point out one further fact. Mr. Day made the point that the Pease-Ackerman letter of 1933, excerpts from which he read to Your Honor, was inconsistent with the possible existence of a conspiracy between the Association and Hartford prior to that date to keep people out of the business or otherwise hold down the capacity of the industry. May I suggest also how unlikely it is that a [fols. 13099-13289] conspiracy between the G. C. A. and Hartford would have come into existence at that precise time about eight months after Hartford had won this case against Hazel-Atlas, just as what the government calls the procession of licensees was coming into Hartford, just as the government alleges the Hartford patent control had made itself effectual. It is not highly unlikely Hartford would have chosen that moment when it had ceased to need any help, according to the government's claim, to keep people out of the industry—it would have come in at that moment and made a conspiracy with the Glass Container Association.

The evidence indicates that during the years when there was on over-capacity, 1932, '33, '34, '35 and '36, then there were some letters to people who inquired, saying we thought there was over-capacity. When there ceased to be there were no more letters, not since 1937. And we insist, in the light of these statistics, the government charge on that branch of the case is not made out.

(Afternoon recess.)

* * * * * * *

[fol. 13290] ARGUMENT ON OBJECTIONS TO PROPOSED DECREE

The Court: Gentlemen, the particular order of business assigned for today is the proposed order submitted by the government as directed by the court's opinion in this case.

I note that there have been three objections filed to the proposal. I assume that they have been filed in accordance with the local rules of the court.

Rule 4 reads:

"Settlement of Judgments and Orders by the Court. Within 10 days after the announcement of the decision of the court awarding any judgment or order which requires

settlement and approval as to form by the Judge, the prevailing party shall prepare a draft of the order or judgment embodying the court's decision"—that was not done [fol. 13291] because the court designated a period of 45 days instead of 10—"and serve a copy thereof upon each party who has appeared in the action and mail or deliver a copy to the Clerk"—I think there is a certificate on file here to the effect that a copy of the proposal was served upon all defendants some twelve or fifteen days ago—"Any party thus receiving the proposed draft of judgment or order shall within 5 days thereafter serve upon the prevailing party and mail or deliver to the clerk a statement of his approval or disapproval as to the form of the draft and, in the latter instance, a statement of his objections and the reasons therefor and a draft of the order or judgment which he proposes as a subtsitute for the draft transmitted to him."

That obviously in this case would be futile, for the objectors to submit a counter-proposal or draft, because of the number of defendants, corporations as well as individuals; and hence the objections are directed to certain specific proposals in the draft as submitted by the government.

I thought, in addition to that, because of the size and complexity of the case, that there ought to be a day set aside for counsel for the defendants to make oral argument, if they desired to do so, which the court reporter [fol. 13292] could take down and transcribe, and which the court could review in the course of the next few days, in arriving at a settled order. That is the reason I set down the matter for today.

May I inquire if the Lynch Corporation, who have filed written objections, desire to supplement their written objections with oral argument?

Mr. Lewis: Yes, they do, if Your Honor please.

The Court: And the same question, of the Thatcher Corporation?

Mr. Emery: If the Court please, we have filed these objections with the understanding that what we are now concerned with is the form of the court's order; and that this is filed, of course, without prejudice to our objections to the order generally which may be entered.

We should like to be heard at a convenient time.

The Court: Ball Brothers?

Mr. McCallister: Your Honor, I think I should make the explanation that we did not file this in accordance with Rule 4-A; but, as Your Honor noted, we have made no suggestion as to a decree. We merely pointed out our objections to certain paragraphs in the present decree.

The Court: I am not criticizing you for not doing that. I am saying I think it would be impossible to do that.

Mr. McCallister: I just wanted it understood that we [fol. 13293] had not even tried to comply with that rule, because of the suggestion you made.

We do not care to make oral argument on the points we have outlined in our objections.

The Court: Does Hartford desire to make oral argument?

Mr. Wall: We desire to mention some of the points of the objections which we have made. May I inquire whether the court would prefer to have us file the objections now in writing?

The Court: I think that should be done. It would be of greater assistance to the court if in writing, although, as I say, the proceedings here today will be transcribed by the court reporter and the arguments will be available to the court next week when he turns to this order.

Mr. Wall: When our time comes, there are two or three related matters which I view as being closely connected with objections to form, which I desire to call attention to.

The Court: Corning: Do they desire to present oral argument?

Mr. Sayles: Yes, Your Honor, rather briefly. And we will also wish to file objections to the form of the order.

The Court: And Owens-Illinois?

Mr. Williams: Yes, Your Honor, we desire to be heard. We will also file objections which we have prepared and [fol. 13294] just have finished.

The Court: Any of the other defendant companies desire to be heard? Hazel-Atlas: Do you desire oral argument?

Mr. Philbin: Yes, Your Honor: the same statements as were made by Owens' counsel.

The Court: I assume then there will be seven defendants who desire to make oral argument here today; all except perhaps Ball Brothers.

Mr. Day: If the Court please, we have prepared some objections. I was out of the office yesterday. There are a few little changes I desire to make. We will file them just as soon as possible.

I should like to be heard quite briefly in support of those objections in oral argument, if Your Honor will permit.

The Court: I think under the circumstances the clerk may call those defendants in order. Thirty minutes to each company ought to be sufficient if the argument is directed to the criticisms or suggestions on the proposed order. And I think perhaps the government ought to be limited to not more than one hour in answer.

Mr. Isseks: May I make inquiry, Your Honor, when shall we have these written objections other than those filed yesterday? We did not receive any written objections until yesterday. But we are not making any point of the compliance with any rule. We saw them yesterday and examined them.

[fol. 13295] The Court: I think if the written objections are to be of assistance to the Court, they ought to be filed by next Monday.

Mr. Isseks: May we have copies served on the government at the same time?

The Court: That may be done.

Mr. Isseks: Thank you very much.

I should like to have counsel serve them at our office, Room 214 Bell Building. Copies of certain documents were sent to the Federal Building, New York, and we did not get them for several days. In the case of the Lynch objections, they are still apparently floating around Toledo. We have someone present at all times at 214 Bell Building.

The Court: You may proceed. The clerk will notify each attorney presenting argument when the prescribed time has expired, if he argues as long as thirty minutes.

The Clerk: Mr. Wall.

Mr. Wall: If Your Honor please, the objections which we propose to put in writing and file, and which in fact have been reduced to drafted form, and are now to be discussed, relate only to the form of the decree. We are trying to avoid any re-argument on the merits in these objections, and are directing our attention to the question whether they conform to the opinion and decision of the Court.

Before going on, I want to call attention to the fact that we shall want to note our exceptions to the findings, and [fol. 13296] to the refusal to find, and to the substance of the relief granted; which I will do after taking up some of these objections to form.

We have also filed a motion to vacate the temporary receivership, which I look upon as being connected with the objections made to the decree. I mention that only in passing, and will come to it later. We, of course, object to the continuance of the receivership and for that reason——

The Court: I don't believe under the circumstances that the Court ought to hear that today. That is not at issue. I learned of that motion which was filed Monday. I had no opportunity to look at it, until yesterday. I find it is unsupported with any written argument; no affidavits in its support; and because of the fact that it was filed three days ago, it does not comply with the rule so as to permit opposing counsel opportunity to answer it. Under the circumstances I think it would be premature for the Court to consider such motion at this time.

Mr. Wall: I was not about to argue the merits of it; but I should like to make myself plain as to the matter of service and hearing. I shall not go into the merits; but I want to point out I think it is something that should be passed upon before final decree is entered. And beyond that the rules have been complied with in that service was made by mail——

The Court: Yes; but service requires eight days by mail. [fol. 13297] It was filed only Monday.

Mr. Wall: It do not so understand it. The filing may follow the service under the rules. Beyond that, as I was about to say, the motion is something which comes up on objection to the final decree, which we want to reserve; and in the course of that hearing we, under Rule 7-B, are entitled to make oral motion. Beyond that the motion is one which addresses itself to Your Honor's discretion peculiarly in that it is a matter which concerns the operation of the Court's own order, and which Your Honor will want to determine.

The Court: The Court does not feel at this time that it wants to be tied to any motion in the consideration of this order. He does not want to include it in his decision on the order or to be bound in any way by any motion that has beeen filed.

Mr. Wall: Your Honor of course has the disposition of the motion. We have nothing to do except present our position on it. That is all I am trying to do. I should like to make it clear, Your Honor——

The Court: You see I followed the course here on motions; I followed the rules which provide that there should be an oral hearing on motions if the Court deems it would be of some benefit to the Court to entertain an oral hearing. Otherwise the rules require that every motion be supported by written argument and affidavits, and that sufficient time be given opposing counsel to answer that argument. If the [fol. 13298] Court desires oral argument to supplement the written argument, he then will request it; otherwise the motion will be passed upon by the Court.

Mr. Wall: Yes, Your Honor. May I simply make myself plain?

We except to the ruling that service was not proper.

We except to the ruling that written briefs are required by the rule.

We call attention to the fact that the motion is such as might be made orally during the course of objections to the continuance of the receivership.

We do now move orally, on the same grounds as stated in the motion.

Furthermore, we do object to the provisions of the decree continuing the receivership in effect.

That is sufficient, I think, to state our position; and that is really all I am trying to do at this moment. Nothing is intended at all as a reflection upon either the receiver or counsel, both of whom personally are highly satisfactory. We are not going into figures. For those we can rest upon the record in the case.

Only I do want to make plain in objecting to the continuance of the receivership, and to the provisions as to the expenditure of money which are made in the decree, we are not on the record in the position of acquiescence in either the temporary receivership or the continuance of it. That [fols. 13299-13307] is the prime purpose of this, and not to take up Your Honor's time in argument on the merits of the motion; and if the oral motion is either not entertained or is overruled, our exception, I have no doubt, will follow; And the same as to our objections to the continuance of the

receivership by the final decree. We respectfully ask our exception to that also.

As to the question of the form of the decree, which we will supplement by objections to the substance also, there are several main points to which we want to call Your Honor's attention.

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[fol. 13308] We do want to say also that we object to Paragraph 58, which provides for a stay, or rather for the judgment not taking effect for thirty days. Addressing ourselves to Your Honor's discretion, and so that we shall not be charged with having abandoned any rights later, we should like now to object to that on the ground that there should be a stay for the sixty days during which we may take an appeal; and if appeal is taken and perfected and prosecuted, that the stay should be until the determination of the appeal. We also desire to note our request that all provisions be stayed, all of the provisions of the proposed judgment. We will, Your Honor, reduce that also to writing and file it and serve a copy to counsel.

I want also to note here, although it may be unnecessary, the fact that we do preserve an exception to Your Honor's action in failing to adopt our findings of fact and conclusions of law; the exception being on behalf of Hartford-Empire, F. Goodwin Smith, Bartlett Arkell, Robson D. Brown, Roger M. Eldred, Karl E. Peiler, Arthur T. Safford, Jr., Theodore L. Champeay, and A. M. Pease, sev-[fols. 13309-13318] erally, and to each paragraph of the findings and conclusions which were tendered.

We also for the same defendants ask respectfully that you note our objection to each finding made by the Court, and each of the conclusions of law, on the ground, of course, that they are clearly erroneous; and, further, as to the findings, that in some instances they are not supported by the evidence; in others, only partially supported; and in others, inaccurate by reason of incompleteness.

In closing, I do request Your Honor to show upon the record prior to the entry of the final decree some ruling with regard to our motion, both written and oral, as to the lifting of the temporary receivership. Again I say that is only for the purpose of connecting with our objections to the continuance of the receivership by the final order.

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[fol. 13319] Mr. Williams: If the Court please, on behalf of Owens-Illinois and its associated defendants, we are presenting now to be filed general objections to the decree, and also specific objections and suggestions on a number of points that we will urge to Your Honor.

We have not covered in this specific manner all of the paragraphs to which we would object; we have assumed in the preparation that others would object to other paragraphs that came more nearly home to them, or seemed more onerous than should be to them; and we have assumed that the benefit to one of an argument on any general clause or order in the decree would redound to the benefit of all. So we have restricted argument this morning, both because of the shortness of time and the fact that others will argue, in the attempt to get away from duplication. We have [fol. 13320] restricted ourselves to the paragraphs that seem to us most unfair or most onerous to us.

I will present to Your Honor a copy of the document from which I will speak, and I will leave with the Clerk our objections in general form to the proposed decree.

I might make some characterization, as I see it, of the decree as a whole. Without bias or prejudice, I think it is fairly apparent from the structure of the Bill that the direction of approach, or theory of approach, if you please, is to come as near to the outside limit of what is permissible by way of injunctive order as has been approved thus far by the Supreme Court.

This proposed order in a good many respects, it seems to us, goes beyond the suggestions of the Court. As we see it, it goes beyond the law as it has been declared up to this time. By reason of the breadth of some of the orders, it is clearly penal and not remedial.

The purpose of this order is to prevent a recurrence of wrongs that have been committed in the past. The purpose is not to penalize, punish, or make it more difficult for these defendants to do business, any more than is necessary to restrain and prevent violations of the law that the Court has found; and to prevent only the violations that have occurred, or those of a like nature which are likely to be repeated or continued.

It seems to me that the purpose of this decree should be only to prevent and restrain to the end that competition will be restored and increased; and that the public may be benefited by the production made by these defendants as

[fols. 13321-13351] well as others in the glass industry. Any penalty, any restriction placed upon these denfendants that goes beyond the necessity of restoring free competition, is a penalty, and affects the public adversely.

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[fol. 13353] The Clerk: Thatcher Manufacturing Company.

Mr. Emery: If the Court please, before taking up the special matters listed in the objections heretofore filed, I desire to dispose of some general matters. We desire to have the record show that:

1. The defendants Thatcher Manufacturing Company and the individual defendants associated therewith, namely H. C. Mandeville, R. W. Niver, E. F. Wellinghoff, S. G. H. Turner, Jervis Langdon, W. H. Mandeville, F. W. Swan and Stanton Griffis severally object and except to the judgment herein on the ground that the same is contrary to law, amounts to confiscation of property of said defendants, is punitive rather than merely preventative, and is not supported by the facts or the evidence produced at the trial.

2. Said defendants severally object and except to each of the findings of fact made and filed by the court on the ground that there is insufficient evidence in support of each of said findings, and each of said defendants objects and excepts to the conclusions of law made and filed by the court on the ground that said conclusions are not warranted by the facts found by the court or by the facts as requested to be found by these defendants or by the evidence produced at the trial of this action.

3. Each of said defendants objects and excepts to the re-
[fol. 13354] fusal of the court to make the findings of fact and to make its conclusions of law as requested by said defendants on the ground that the proponderance of the evidence supported such findings of fact, and each of them, and that said conclusions of law were proper conclusions based on said facts and upon the preponderance of the evidence in this action, their objections being taken separately as to each finding and as to each conclusion submitted by them.

Now proceeding with the matters contained in the objections filed, No. 1 relates to the definition of glassware. This

has been mentioned by other counsel, but not exactly in the manner that I propose to suggest. Subdivision A of Paragraph 1 defines glass containers. Subdivision B of the same paragraph defines non-container ware. My point is that the term "glassware", as defined in Subdivision C of Paragraph 1, and as used elsewhere in said proposed form of decree, includes but is not limited to the glass containers and non-container ware as defined in Sub-paragraphs 1-A and 1-B thereof. It may include all kinds of glassware, as I see it, as it says shall be deemed to include, but it does not say that it shall be deemed to be limited to that. I think that should be made clear.

The second specification refers to Paragraph 9 of said proposed form of final judgment, on the ground that the [fol. 13355] provision thereof are not specific, as required by Rule 65, Subdivision D, of the Rules of Civil Procedure; and by Title 28, U. S. Code, Section 383. That feature has been touched upon by others. What I want to add is this: subsequent paragraphs of said proposed form of final judgment purport to set forth specific provisions of injunction. Consequently my point is that this Paragraph 9 should be omitted entirely as being indefinite, and that other provisions of the decree cover all that the case requires as contained in Your Honor's decision.

Subdivisions 3 and 4 relate to Paragraphs 21 and 23. The point as to each is the same, that the injunction should not include these individual defendants, but should be restricted to the corporate defendant, as these individual defendants are not engaged in the glass business except as associated with the corporate defendant. To include them in the general terms which might be appropriate to relate to the corporation is very likely to affect them in some outside capacity, and I think not at all necessary to the order that the court desires to make. They could not file an injunction against the corporation in connection with their activities in the corporation without their being comprehended within it. Consequently it is not necessary to [fol. 13356] include them individually, and to include them might bring in something that Your Honor did not intend to include in the case.

Subdivision 5 relates to Paragraph 24 of said proposed form of final judgment, and is objected to on the same ground and for the reason that individual defendants who are associated with corporate defendants in this case may

also be associated with other firms or corporations not defendants herein, and such injunction might therefore affect patent rights not involved in this case and not considered by the court as having any relation to the matters in controversy herein.

In other words the way this is drawn and the terms used in that Paragraph 24, it might include something which I think counsel for plaintiff did not intend to include in the way of property rights, patents and matters of that kind, that the individual defendants might have connected with an entirely different business. As is true in many corporations, some of the members of the Board of Thatcher Manufacturing Company are men engaged in individual businesses on the outside; and I think the court will want to be careful not to hamper them in their other business [fol. 13357] activities, simply because of the fact that they happen to be made defendants here as directors of this corporation.

Proceeding: Said Paragraph 24 is objected to on the further ground that it purports to require Thatcher Manufacturing Company and individual defendants associated therewith, and each of them, to file a written instrument with the Clerk of this Court within thirty days from the effective date of such proposed final judgment concerning the licensing of patents, although it is not shown by the evidence in this case that any of the said defendants is the holder of any patent relating to the manufacture of glassware; and it is well known to the court that Thatcher Manufacturing Company, at the time of the commencement of this action, was a licensee only and not the holder of any patents connected with the manufacture of glassware. So my point is the practical application of what is sought to be provided for clearly excepts Thatcher Manufacturing Company and certainly its individual defendants from the necessity of filing any such application.

Subdivision 6 relates to Paragraph 25 of said proposed form of final judgment, and is objected to on the ground that any such injunction should not include these individual defendants, but should be restricted to the corporate de- [fol. 13358] fendant, as these individual defendants are not engaged in the glass business except as associated with the corporate defendant; and for the reason that the effect of the provisions of said paragraph is not clear, particu-

larly as it might affect individual defendants who might be connected with some other line of business in transactions having no relation to the matters involved in this case and not contemplated by the decision of the court herein.

Subdivision 7 refers to Paragraph 26 and makes the same objection.

Subdivision 8 refers to Paragraph 27 of said proposed form of final judgment, and objects on the ground that any such provisions should be specific as to the agreements to be cancelled. There is a general phrase in there which I think is unnecessary, and it is difficult to determine the meaning of. It says "any other contract". I think that is unnecessary because the evidence in the case made clear what contracts were referred to.

Then the important matter comes here: We object to the cancellation of these contracts, even though specified, for the reason that such cancellation of license agreements leaves the licensee without the right to carry on its business pending compliance with the requirements of the orders of the court as to arrangements superseding such [fol. 13359] license agreements, and the provisions of said proposed form of final judgment are not adequate in that respect.

In other words as I said a while ago Thatcher Manufacturing Company is a licensee only. It is dependent entirely upon machinery which it has in its possession and leased and licensed to it by the Hartford-Empire Company.

The Court: You are fearful that another license agreement might not be forthcoming.

Mr. Emery: I am fearful there might be some delay, and we are enjoined from doing anything in this court's decree. It might involve some possible contempt of court because of not having the arrangement immediately in effect.

Subdivisions 9 and 10 refer to Paragraphs 28 and 31, which are objected to on similar grounds.

Subdivision 11 relates to Paragraph 33 of said proposed form of final judgment wherein individual defendants are enjoined from holding any capital stock, bonds or other evidences of indebtedness of more than one corporation engaged in the manufacture and sale of glassware, on the ground that the proposed provisions of said paragraph, without some limitation, would impose undue hardship on

individuals who had made investments in stocks of other corporations which might be deemed comprehended within such order, but the amount of stock held by them is so small [fol. 13360] in proportion to the total amount of stock of such corporation issued and outstanding as not to be of any importance in connection with the result sought to be accomplished in this case.

That has been presented in other forms by other counsel. The point I want to make is that there ought to be consideration of some limitation on that sort of injunction that would permit a defendant to hold stock in some other company for investment purposes only. It might be a large company. He might have one hundred shares or two hundred shares out of several million dollars capitalization. That could not possibly influence the policy in any way at all. He is holding it solely for its value and for the income derived. It could not possibly have any effect upon influencing conduct in connection with the law that is sought to be enforced here.

The suggestion in Subdivision 12 is made in connection with paragraph 34 of said proposed form of final decree, that it is objectionable on the same grounds; and the further reason that where sales therein referred to have been made through brokers, the seller might well be unable to furnish such information as is provided for in the order, or to obtain the same within the time stated in said paragraph. Of course if it is a regular firm of stock brokers, I think [fol. 13361] perhaps in some cases, after some investigation, they may be able to get them in. That is the point I wish to make.

Subdivision 13 to Paragraph 36 of said proposed form of final decree, on the ground that it does not make an exception in the case of subsidiary and parent corporations similar to that contained in Paragraph 35. In other words without the exception I am now suggesting, it might prevent the corporation from owning the stock of a wholly-owned subsidiary, which is not intended, and I think could be rectified.

And then the language of that section might conflict with the known facts in another way, that the general terms of that paragraph might conflict with the provisions of other paragraphs where it is provided that the Hartford-Empire Company shall sell the machinery and equipment in the

possession of, Thatcher Manufacturing Company for example. The wording of this paragraph on its face might prevent it from buying that very machinery it has offered to buy under those conditions. The two should be reconciled in someway.

Subdivision 14 relates to Paragraph 40 of said proposed form of final judgment, on the same grounds, and for the reason that the acts and conduct purporting thereby to be enjoined might involve the relations between subsidiary and [fol. 13362] parent corporations, and might involve the relations between individuals and the corporation with which they are connected, or between themselves in relation to the affairs of such corporation. The language is of such general character in this Paragraph 40, as has been pointed out heretofore, that it might appear to enjoin an agreement and arrangement that would be made within the corporation itself, or between the parent corporation and a subsidiary, or between the individual directors and officers of that corporation.

Subdivision 15 relates to Paragraph 52 of said proposed form of final judgment, on the ground that the terms therein used are not of clear and established meaning; that is, my thought is that the words "blocking off" and things of that kind, while they are sufficient for ordinary conversation, are not definite enough to be used in a decree of the court; and the provisions thereof might be deemed to prevent the obtaining of a patent for the purpose of suppressing methods, means or processes purporting to be covered by patents which are invalid. In other words if some one else has a patent and one desires to obtain or try to obtain a patent involving processes that might be claimed to conflict with that patent but antedated it, this might interfere with the usual methods of inventors to obtain a patent.

[fols. 13363-13369] Subdivision 16 to Paragraph 53 of the proposed form of final judgment on the same grounds.

Subdivision 17 to Paragraph 54 of said proposed form of final judgment, and particularly to Subdivision C thereof, on the ground that the word "trap" renders the same ambiguous, and any defendant company hereafter acquiring a patent might be accused of having obtained the same in violation thereof.

I think, Your Honor, I will not take the time to go into these at any length. Other counsel have discussed some of

them. I think many of them are self-evident on the face of them.

One general comment I want to make on these matters and matters of that character is this: that this is a part of an injunction that the court has issued. It is enjoining persons and corporations, and of course an injunction against a corporation operates against the persons connected with it. Any ambiguity puts the individual in the position of having to determine at his peril whether he may do this or that, and if he makes a mistake he is liable to contempt of court. In other words it is not a case of an ordinary contract where a man may contend about the meaning of words. Here the words should be sufficiently definite to protect a defendant from any claim being made against him under any kind of ambiguous or uncertain or doubtful provisions.

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[fol. 13370] Mr. Day: If Your Honor please, in the way of a preliminary matter, and following the course of action suggested by other counsel, in behalf of the defendants Glass Container Association, Stevenson and Ackerman, we except to the action of the court in not adopting as its findings of fact the findings submitted by us, upon the ground that the findings so submitted are supported by the evidence and are pertinent to the issues in this case.

[fol. 13371] We also except to the action of the court in not adopting as its conclusions of law the conclusions of law, upon the ground that they are not sound conclusions of law relevant to the case and are supported by the evidence.

We also except to the findings of fact made by the court thus far, upon the ground that they are not supported by the evidence, at least are contrary to the weight of the evidence and not supported by at least substantial evidence.

And we except to the action of the court as to its conclusions of law, upon the ground that they are not sound conclusions of law and are not supported by the evidence.

Coming to the objections to the proposed form of decree, there are four paragraphs that relate particularly to the Association and its affiliated defendants, Stevenson and Ackerman. Mr. Stevenson and Mr. Ackerman, defendants, are included within Section 33, and I think 34, and perhaps other sections having to do with the matter of stockholdings in various companies. Without going into any detail, I

wish to adopt what was said this morning by other counsel on that subject, referring to our individual defendants.

The other paragraphs are 37, 38, 39 and 40. No. 37 provides for the abolition or doing away with the Statistical Committee; and then in the latter part of that section it is [fol. 13372] in substance provided that the By-laws and certificate of incorporation of the Association shall be so amended as to provide specifically for the doing away of that Statistical Committee, and that there shall be no other committee substituted in its place and stead having similar functions.

We object to that last part of that paragraph, that is, the insertion in our certificate of incorporation or in our by-laws of a provision to the effect that the committee shall be abolished, because that is not necessary. It is not suggested by Your Honor in your opinion. If this court says that that committee shall be abolished, it will be abolished. It certainly is not necessary for us to insert a provision in our certificate or in our by-laws to that effect.

Section 38 provides that—

"The defendant Glass Container Association of America, Inc., be and hereby is enjoined from continuing its present officers and board of directors in office and said defendant be and it hereby is directed to submit, on notice to the Attorney General, the names of such officers and directors as may be elected or appointed to succeed the present officers and directors to this Court for its approval prior to their taking office."

[fol. 13373] That provides for the wholesale resignation of the present officers and directors. The point we wish to make by way of objection to that provision is that the court in its opinion does not require that wholesale resignation of officers and directors.

Your Honor in the opinion at Page 168 said:

"Hence its personnel must be changed. This will include the membership of its Board of Directors and its officers. The new members are to be subject to the approval of the court, and shall have no connection whatsoever with any of the defendants herein."

As we construe that language, Your Honor did not intend that those who were officers of the Association or were members of its board of directors, and who were not de-

fendants or connected with the defendants, should necessarily resign; but that those who were so connected with the defendants should resign, and that the names of those selected in their stead should be submitted to the court upon notice to government counsel.

That brings us to Section 39, and that is the one provision in this proposed order following out the suggestion which is contained in Your Honor's opinion which is perhaps as drastic as anything by way of relief that is here involved. I want to be heard upon that for just a moment. [fol. 13374] There is a provision there that the by-laws and certificate shall be so amended as to provide that nobody connected with any of the defendant companies shall in the future be an officer or director. That is subject to the same objection we made as to a certain portion of Paragraph 37, upon the ground that such a change in our certificate or by-laws is not necessary to carry into effect the order of the court.

The first part of 39 reads this way:

"The defendant Glass Container Association of America, Inc., its officers, directors, agents, * * * are hereby enjoined from hereafter electing, employing, or continuing in office or in the employ of said Association any person who is at the same time either an officer, director, agent, or employee of Hartford-Empire Company"—and any of the other defendant companies.

It may be, if Your Honor Please, and probably is true that the provision so inserted in the suggested form of decree by government counsel falls within the language Your Honor used on Page 168, because Your Honor did say: "Hence its personnel must be changed." This will include members of the board of directors and new members who have no connection whatsoever with any of the defendants herein.

[fol. 13375] The suggestion we make at this time is that it is not necessary to carry that provision into effect in order to carry out and make thoroughly operative Your Honor's decree. In other words if you say to this Association it shall not do this or that, it is not necessary, in order to make sure that your decree in that respect will be carried out and performed, to provide that the structure of the Association, so far as its officers and directors are concerned, shall be so changed as not to permit any one to be

an officer or director connected with any one of these defendant companies.

These defendant companies comprise, as Your Honor recalls, a large and substantial part of the industry, I think perhaps 60 or 65 per cent—although I am not to be bound by that figure because that is just my own estimate of it. It seems to us upon the record in this case of what the Association has done and what it is doing by way of valuable, clearly lawful activities, together with the fact that whatever it has done by way of transgressing the law was done some time ago and was either actively or virtually abandoned a couple of years ago, that there should not be a provision here which would say to this Association in this industry, which Your Honor himself said should not be [fol. 13376] dissolved, that it should not have among its officers or upon its board of directors any one connected in any manner, shape or form with those defendant companies.

Frankly I am saying that the Association will carry out Your Honor's decree in this case, or whatever the ultimate decree in this case may be, without the necessity of requiring us to get off our board or to remove from the personnel of our officers persons involved in those companies. Our present board of directors consists of fifteen members. I think five of them are connected with the defendant companies and ten are not. The President of the Association is Mr. Lamb, of Carr Lowrey Company; Mr. Mandeville, of Thatcher, is Vice-President; Mr. MacDonald, of the Dominion Glass Company of Montreal, is our Second Vice-President. I just want to make that suggestion to the court. I think perhaps what the government has suggested by way of proposed judgment here may fall within what seems to be a reasonable and sensible interpretation of the language Your Honor used; but because of what it might mean to the Association in carrying out its concededly lawful activities, I make the suggestion respectfully to Your Honor just as I have made it.

That comes down to Section 40; and there was very little [fol. 13377] guide in Your Honor's opinion for what is set forth in this proposed decree in Section 40. That has to do with the activities that are permissible so far as the Association is concerned: I should more correctly say not permissible because it is all by way of injunction as to what shall not be done, and what is permissible would appear only in the form of what is not prohibited.

Your Honor on Page 167 of your opinion said this:

"The Glass Container Association must be treated separately. The court is of the opinion that this concern has engaged in unlawful practices through its cooperation in the furtherance of some of the aims of the conspiracy. In addition, it has been shown that it is a breeding place for many of the illegal practices established herein, and provides a channel through which they are effectuated. However, the court does not believe that dissolution is necessary. But its trade association activities must be stopped, as well as all the other unlawful practices in which it has been engaged. The court believes it best that it shall continue merely as a statistical and research body, and shall not go afield in an effort to dictate to the industry, or be used for [fol. 13378] that purpose."

Under that broad statement by Your Honor the government has gotten up in Section 40 of the proposed decree a statement of the acts as to the performance of which we are to be restrained; and we submit that an examination of those provisions will disclose that they go far beyond the proper limits and, we believe, up to this time, the limits recognized by judicial decisions as applicable to cases and situations of the kind here presented.

Of course Your Honor is familiar with the Sugar Institute Case, the Maple Flooring Case and other decisions of the Supreme Court and other courts, which announce the general doctrine that it is not unlawful to have a statistical agency or association to circulate and distribute and exchange data as to production and matters of that kind, even though if that is being properly and lawfully done, the tendency might be to so influence individual action as to accomplish what is generally characterized as stabilization of the industry or some part of it.

In a case of this kind of course Your Honor could grant an injunction against our agreeing or conspiring or combining to restrict competition, to fix prices, to restrain trade by means of this exchange and distribution if that were the [fol. 13379] purpose of our data, research, forecasts, &c.; but it seems to us when Your Honor examines the terms and provisions of this proposed decree, you will agree with us that counsel for the government have gone pretty far afield.

By Paragraph 40 we are enjoined from "agreeing, combining, or conspiring" to limit the production of glassware or of machinery; "or to fix, raise, maintain, or adhere to prices of glassware or of such machinery."

Then the next paragraph, over at the top of Page 33, says "or to coerce, persuade, cause, impel, advise or induce any manufacturer of glassware or of such machinery to limit the production of glassware" &c. We object to the use of the words "persuade, cause, impel, advise or induce", upon the grounds, briefly stated, that it will not permit of any character of statement that we might innocently make and without violating the law in any respect; by something that we lawfully did or performed or carried out, to persuade somebody to do something, cause him to do something, impel him to do something or induce him to do something, or, even, in a certain sense of the word, advise him to.

Now (b): we are enjoined from conspiring "to ascertain the volume of business of manufacturers of glassware or of machinery used in the manufacture of glassware for any period or periods, or to make forecasts of the estimated [fol. 13380] demands for different types of glassware or of such machinery, where the purpose or effect thereof is to coerce or persuade" &c. We do not like the use of the words "effect" and "pursuade". If all we did was to engage in some activity the effect of which was to persuade, our conduct in the premises might be perfectly innocent and outside of the law.

"(c) to collect, compile, analyze, or distribute data concerning the production, sales, * * * where there is any disclosure of data concerning any particular manufacturer"—that is broader than anything I think we have ever heard of, but we cannot agree to collect or distribute that where we tell anybody to any extent any information by way of data concerning any particular manufacturer—"or where the purpose or effect is to coerce or persuade"—and that falls within the same objection I made a moment ago.

"(d) to distribute or report any statistics or statistical compilations concerning any aspect of the manufacture and sale of glassware or of machinery used in the manufacture of glassware, other than information bearing directly upon

royalty payments * * * unless such information is made fully and fairly available to the general public at the time of its initial dissemination;" So there we are enjoined from [fol. 13381] distributing data as to any aspect of the business of any individual, any aspect of the glass business, unless we make it all public. Your Honor can see the objection to that and how far it goes beyond the scope of the injunction.

The next part relates to auditing books.

The next is (f) "to allocate or refrain from soliciting customers of manufacturers of glassware or of machinery used in the manufacture of glassware, or to allocate markets or marketing territories among the several manufacturers"; I want to cover that one, and the one which relates to giving information as to individual business, in our written objections, because I do not want to take any more time than I have to.

Now we come to (2) and (3), and (2) and (3) in that Paragraph 40 are not even related to the conspiracy. Turning over to Page 32 you see we are enjoined from combining or conspiring to do certain things; then they have (a), (b), (c), (d), (e) and (f). But (2) and (3) are not even related to the conspiracy.

In other words we are enjoined under (2) from "formulating, promoting, or taking part in any plan with any other corporation for the prorating of business or the equitable sharing of available business;" even though we do not do that with reference to the conspiracy charged or any [fol. 13382] conspiracy at all.

Coming down to (3), we are enjoined from "distributing data concerning the production, shipments, sales, orders, costs, or prices of any manufacturer of glassware or of machinery to be used in the manufacture of glassware, or presenting or discussing"—enjoined from presenting or discussing—"data dealing with sales, orders, costs or prices at meetings, or elsewhere, or by correspondence or otherwise." In other words if any two of the defendants here or any persons connected with the Association met any time or place and discussed data dealing with sales, orders, cots or prices, we would violate the restraining order, or permanent injunction, if Your Honor granted it in the form in which it is here sought. And then again we are enjoined "or by correspondence or otherwise, in

such form or manner as to indicate''—just indicate—''that any manufacturer or manufacturers of glassware or of such machinery has or have exceeded any production quota or failed to adhere, or should conform to any price.''

We will file, as Your Honor has been kind enough to permit us all to file, our written objections to this proposed journal entry. Suffice it to say now I think Your Honor will agree with us that counsel, in trying to put down on paper what they believed this court had in mind when it [fols. 13383-13384] said we had to cease being anything except an association for statistical and research purposes, they put down on paper an injunction against acts, which, if carried into effect by order of this court, will not give us the opportunity or chance or right to do anything along lines of what have been up to date recognized to be justifiable and legal and proper trade association activities.

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[fol. 13385] As to the proposed decree, which the government served upon counsel for the defendants Saturday morning, September 19, some twelve days ago: first of all, it would be physically impossible to comment on every suggestion made by counsel for the various defendants, or to [fol. 13386] mention the various matters in their particular written objections now on file, such as Ball Brothers' objections, the objections of Collins, and certain of the other gentlemen who have spoken. The government would like it understood that our failure to comment does not constitute an acquiescence. Some we will give careful consideration to and decide without the necessity of our making any formal reply.

We should however like an opportunity to see these various formal papers that are coming in some time Monday, and, if necessary, to reply to them. I should appreciate it, Your Honor, if you would give us until Wednesday noon—I assume that we will get them before four o'clock Monday—give us thirty-six hours to prepare any comment and any suggested changes that we may wish to make.

Before commenting on some suggestions made to-day, some of which we heartily agree with; we think they were an oversight on our part; we think it is clear from the proposed decree it was intended to cover the situations mentioned by the various counsel.

But before going into those, I think it is important to read again for the benefit—I don't think for Your Honor—but for the benefit of counsel the most important part of your [fol. 13387] opinion on the relief, which every one on the other side seems to ignore: this sentence, in which you state:

"The following is intended as a statement of the principles to be followed and is not a detailed account of all the steps necessary to effect a complete relief from the illegal practices."

With that as a guide, Your Honor, and looking to the entire opinion, to the entire conclusions of law and findings of fact, and to the record in this case, government counsel have spent many, many days, I assure Your Honor and counsel, in preparing the proposed judgment. But we have apparently made certain mistakes, which we are willing to rectify.

We have always understood this decree to apply only to patents of the United States. We think it is clear from the decree. So there will not be any misunderstanding, we are glad to adopt the suggestion, I-L, submitted by Owens, namely, the term "patents", and, again, "patent applications" shall mean United States letters patent and applications for United States letters patent, respectively.

Turning to our draft of decree, in I (a), in the fourth full line, there is an obvious mistake. The words "wide mouth neck bottles" are clearly erroneous; "neck" should [fol. 13388] be out.

Turning to (B), the suggestion has been made that there should be within the exclusions of the definition of non-containers, in addition to flat glass and fiberglas, structural glass and glass bricks. We accept the amendment. The case does not involve those particular types of glass, and we are glad to except them.

On the other hand, the suggestion that we eliminate optical glass is contrary to the record in this case; and contrary to the stipulation signed by counsel, Government Exhibit No. 1568, that the non-container field shall specifically include optical glass. We urge Your Honor to follow that exhibit in this case, which is a stipulation between certain of counsel.

I ought to point out, Your Honor, that the definitions in A and B are taken, word for word almost, from that stipulation which is Government's Exhibit 1568.

Coming to whether or not stackers are within the purview in this case, I submit, Your Honor, that many exhibits throughout the case show that feeders, formers, lehrs and stackers were part of this so-called Unit Plan. There was evidence also that there were tying-in clauses in connection with stackers. There is ample evidence throughout the [fol. 13389] case that the definition in Paragraph 1-K, we submit, should stay in the decree.

In B, in copying this definition from Exhibit No. 1568, one of our stenographers, after the word "bulbs"——

Mr. Isseks: The seventh line down, where it says "illuminating ware, including bulbs." Our stenographer left out three very important words: "tubing and cane", which should be part of the non-container ware. Those words "tubing and cane" and optical glass are part of the exhibits in the case, as the so-called Corning non-container field. I will not burden Your Honor with any reference to exhibits.

There was the suggestion made by counsel for Hazel Atlas that our definition of feeders, formers, stackers, lehrs and suction machines was too broad because it included auxiliary equipment; and that if somebody were a stockholder in a dynamo company, for instance, he might have to give up that stock. As to the construction of the decree, particularly Paragraph 33, we do not think there is any confusion in the definition; but if it will satisfy counsel we will add at the end of each present definition, such as where it says "Feeders shall mean" &c., "together with [fol. 13390] all auxiliary and accessory parts of said apparatus": the addition of these words: "when designed to be used in connection with any such apparatus".

As to the ribbon machines, I don't know whether Your Honor wants to hear me at length. I think the evidence is replete throughout the record, time and time again, that the ribbon machine was part of the division of fields. Hartford claimed rights under it in the container field. Corning said they did not have it. They were arguing about it. Howard said the so-called auto-blow read on the ribbon machine. I submit, upon the findings of fact, the conclusions of law, and the evidence in this case, the ribbon machine comes squarely within the purview of the record, and should be held to be subject to the various injunctive and other provisions of the decree.

As to Empire Machine, it is true it was dissolved. It was dissolved after suit and after, I believe, trial was directed. We have in our various briefs and at various times in the case shown that the dissolution of Empire Machine did not make the issues moot. I think there are statutes in practically every State in the Union—this particular corporation was a Maine corporation—which say that a corporation, notwithstanding voluntary dissolution, continues [fol. 13391] for various purposes. I submit that the decree should operate against that company.

As to Paragraph 9 of the decree, various suggestions have been made that that goes too far because it goes outside of the particular container field. I submit, Your Honor, that where Your Honor has found, as apparently Your Honor has—I should say unquestionably Your Honor has—that these defendants have flagrantly for many years violated statutes on the books since 1890, it is not going too far to enjoin them from future violations of that same act. All that Paragraph 9 is intended to do is to enjoin them from combining and conspiring to violate the Sherman Act: true, in any connection, with any other product as well as glass containers and glass machinery.

Why should we have to start more suits against these people? They are before Your Honor. They have shown a propensity, I say an evil propensity. And I say that without any fear of contradiction, to use the language of one of the counsel for the defendants. The record shows it. Your Honor's opinion shows it. It seems to me what ought to be done here is to enjoin them for all time from violating statutes on the books, so that we should not have to institute another proceeding against them and have years go by before we get a decree; and so that we can come before [fol. 13392] Your Honor, or before some successor of Your Honor, and seek to hold them in contempt.

Going to the next paragraph to which I think comment was made: Paragraph 15. It is true that we have added the words "and license fees" to a similar paragraph in the order entered by Your Honor. We did that based on some evidence in the case. It was not clear whether the license fee was in full payment of the equipment, the license fee being the initial payment; and because there might be some dispute as to whether or not it consisted of more than cost, or cost and a reasonable profit, we thought they ought to be ear-marked. But I want to be frank and say if Your Honor

feels that license fees are something that should not be segregated, or the receiver thinks they should not be segregated, we have no strong feeling in the matter whatsoever. Those words may go out.

Our sole aim in Paragraph 15, drawn by us and following Your Honor's decree, is to make sure that a court officer holds these funds during any interval between the time of the appointment of the receiver and the time when the decree is affirmed, as we hope it is, by the Supreme Court. The last statement I made applies to the language which we added at the end. We thought that it would be unfair [fol. 13393] to Hartford or the Receiver to have to turn back to the licensee the full amount of the royalties paid in, or royalties and license fees, if, in the interim, either Hartford or the Receiver had to spend out monies which were properly allocable to that particular licensee. So we added the words "less any amounts paid out by the Receiver for the benefit of any such licensee and properly chargeable and allocable to any such licensee". We did it deliberately because there are so many contingencies which may come up; and it seemed to me in a situation like this it ought to be left vague. Naturally, we will be guided by any suggestions which counsel for the Receiver may have to make; but, so far as we are concerned, we think that language ought to be in that form.

It was suggested by counsel for Thatcher that Paragraphs 21 to 25, inclusive, should apply only to the corporations and not to the individuals. I do not need to point out to Your Honor how easy it would be to avoid particular paragraphs if they applied only to the corporations. All Mr. Levis or Mr. Goodwin Smith or Mr. Peiler or one of the other individual defendants would have to do would be to go into business for himself, and do exactly what is prohibited, or do something not within this [fol. 13394] particular decree; and then the whole effect of the decree would be lost. I submit that the court has indicated and the record shows clearly that the individual defendants now left in the case have flagrantly violated the law; and that they should, like the corporate defendants, be bound by the same injunctive provisions.

Coming to Paragraph 23: this particular paragraph, it has been suggested, does not permit proper discrimination. I submit, Your Honor, that this paragraph, which relates to selling machinery for the production of glassware, should,

as it provides, prevent the defendants from ever discriminating against any one. It applies only to machinery. The record shows here that there has been discrimination. There was discrimination in favour of Owens, Hazel Atlas, Thatcher, Lynch—I do not want to go into the evidence—but it seems to me—and Ball Brothers too—it seems to me unless the court prevents them from discriminating in the future, they will be back again at their old practices.

It was suggested by one counsel this morning that this paragraph would require them, once they sold machinery, to stay in the machinery business. I think a careful reading of the paragraph will show clearly that it does not have any such intention. There is no doubt in my mind it applies only while the corporation is engaged in selling machinery. [fol. 13395] It does not say it must continue in the business of selling machinery.

Coming to Paragraph 24: Paragraph 24-A is a specific direction, Your Honor, that there shall be compulsory licensing, royalty free; or they shall not be engaged in interstate commerce unless there is compulsory licensing, royalty free:

"(a) agree to license without royalty or charge of any kind and for the life of the patents any applicant to make, to have made for it and to use any number of machines and methods used in the manufacture of glassware and embodying inventions covered by any patents or patent applications"——

Of course no enemy alien, no person whose country is at war with us right now, should be entitled to a license. If there is no statute to that effect, let us put it in the decree. We will suggest after the word "applicant", we add "other than an enemy alien or agent thereof".

It seems to me in normal times under our Democratic System an alien has certain rights. Because he happens to have, at that particular moment, citizenship in a country such as Mexico, or one of the South American Countries, or Russia: that should not prevent him from becoming a licensee. It seems to me any prohibition ought to be against some one who is recognized as being a citizen of a country [fol. 13396] with which we are having hostile relations,

The Court: The privilege may be limited, may it not?

Mr. Isseks: It seems to me to be a mistake to say just because a person is a foreigner, he may not have any rights.

There are many reasons why a person may not have gotten around to citizenship. I do not have any specific case in mind. I can see where in the case of an enemy alien there ought to be something done to preclude him from getting it. But in normal times, peace times, I think our whole Democratic System is based on the theory that an alien here gets the same privileges. I think he can sue in any one of our courts; do most anything else that a citizen can. Of course he cannot get a pass-port, and he has to get a different kind of paper to leave the country.

Somebody suggested it was unfair to let these can companies get a license because they compete with glassware. My understanding is one of these defendants has for many years manufactured cans. And if the can industry does anything which calls for remedial action by the courts, I assume the Department of Justice will take the necessary steps.

But the purpose of Your Honor's decision and the purpose of Paragraph A is to give any applicant who has proper credit the right to manufacture machinery and go into competition with the glassware defendants. I assume [fol. 13397] one of the reasons is because they have stifled competition in the United States.

It seems to me if paper companies or can companies make application, they should not be discriminated against merely because they are in competitive lines.

As to 24-B, which is a provision for compulsory licensing as to future patents, it is true that Your Honor's opinion did not specifically refer to that. But you did state it was only a guide. It seems to me, Your Honor, that if this court is interested, as I am sure he is, in preventing a recurrence of the very same conditions that have existed at least since 1916, clearly since 1924, some remedial relief is necessary; not punitive, I assure Your Honor.

We are saying that as to those future patents after the decree, applications made and patents issued, that they cannot do what they did before. That is all we say. They cannot get together and give special privileges, rights, devided fields, and kick-backs. There must be compulsory licensing on a reasonable royalty basis. We have provided if there is any dispute they can come to court.

I think there is a little structural error in our 24-C. It should be broken down into 24-D. The last sentence [fol. 13398] should be 24-D; and it should provide under

this Paragraph 24-D so that any dispute under either A, B or C can be taken up with the court.

I think that form of relief, which is within the court's power, in order to prevent similar conduct that the court has found illegal, is fair and proper, and should issue from the court; otherwise, we will be back here again, or in some other court, in years from now.

As to 24-C, counsel for Lynch state that we have read language into the court's opinion because the court said Lynch did not say Lynch type forming machines. I submit, Your Honor, other pages of Your Honor's opinion, I think 68 in our printed copy, shows Your Honor in the opinion at various times refers to Lynch type forming machines, as distinguished from Miller; and that our construction, our interpretation, of what we understood Your Honor's opinion to be is a fair and reasonable one, and based on the record in this case: having in mind, particularly, Your Honor, that Your Honor has found as a fact and concluded as a matter of law that the Miller acquisition was illegal, the acquisition of the Miller wide mouth forming machine business being contrary to the Sherman Act. I submit Paragraph 24-C as drafted should stand.

[fol. 13399] As to Paragraph 25, it is stated there too we are preventing discrimination which might well be proper under other circumstances. I say here as I said in other instances that these defendants have been found by Your Honor to have discriminated against others in favor of themselves. I am not going to repeat the instances. In view of that discrimination the government thinks that a paragraph along the lines of Paragraph 25 will protect the industry against misconduct on the part of these defendants.

As to Paragraph 26, I think the only comment that was made was made by counsel for Hazel Atlas. Counsel stated that the words "consequences have been fully dissipated" evade. Your Honor, we copied those words from Chief Justice Stone's opinion in the Moreton Sale Case, and in the B. B. Chemical Case. There Mr. Philbin's partner, Mr. Lyman, was counsel for plaintiff. There the plaintiff was suing for patent infringement. The defendant alleged that the plaintiff in connection with the leased machines required the various individals to buy certain, I think it was fabric. There was a tying clause. That defense was held

good and sufficient to prevent plaintiff from suing for patent infringement. Counsel in the Supreme Court, Mr. Philbin's partner, said, "We are willing from now on to put [fol. 13400] these machines out without such a tying clause." But the Chief Justice said in his opinion, "It makes no difference. We say you cannot sue until you come back here and show us"—I believe I am quoting it word for word—"the consequences of the illegal practices have been fully dissipated."

In view of that language of the court, it seems to me Your Honor, under the facts of this case, would be justified in adopting it as a part of the decree; and in saying that these defendants cannot sue or cannot do the other things mentioned in Paragraph 26 until they have demonstrated, on application to the court, as they can under 57, that the consequences have been fully dissipated.

We should like to make a minor suggestion in Paragraph a of Sub-Paragraph A of 26, where it says "bringing any suit." We should like to insert "bringing or maintaining any suit," in view of the three pending suits Hartford has now.

And, C, after the words "license fees," the second line, I think there ought to be inserted for clarity the words "or profits."

Coming to Paragraph 29, of which we think more than anything else has been made by counsel for the defendants: apparently the biggest criticism is that we were very frank about it. We certainly are. We intend Para- [fol. 13401] graph 29 to apply to any product made by any of the defendants. And that was done deliberately. These defendants come before Your Honor, if I may use the word, convicted of violation of the Sherman Act and Clayton Act. I don't think it is an unfair statement to say that from the record in the case, they had a propensity to violate the law. It seems to me unless they are restrained, there is nothing before Your Honor to indicate that they will not continue, whenever they possibly can, to do similar illegal acts.

The government should not be required to police the defendants before Your Honor; and the matters in respect of which we ask that injunction should issue are matters which Your Honor found, on Page 182 of our printed copy of the opinion, were the heart of the vicious illegal prac-

tices. In connection with the licensing and leasing system, you state:

"The court believes that this is the greatest abuse. It is through the licensing and lease system that Hartford retains control over and dominates the industry. It is in this manner that Hartford maintains a system of stabilization of the industry and enforces restrictions and conditions far beyond the privileges of the patent grant. It is because of this system that it is unnecessary for Hartford, Owens, Thatcher, Ball Brothers and the others to enter actually into written agreements in restraint of [fol. 13402] trade."

The court having found in the licensing system vicious practices of restrictions, territorial restraints, and restraints as to character of products, it seems to me that the court has the power to and should enjoin the people before Your Honor from using these same practices in connection with every other phase of their businesses. It was with that thought that Paragraph 29 was inserted here, and we respectfully submit it should be entered by Your Honor.

There is one sub-paragraph we think they also directed their attention to, and as to which there may be some just criticism. That is Sub-Paragraph F. It would apparently apply to any product, whether patented or unpatented, as drawn. I think we are prepared to submit a paragraph which would limit it to products or machines or equipment embodying inventions covered by patents or patent applications owned or controlled by the defendants.

As to their criticism, namely, that it does not give them an opportunity to discriminate where they can otherwise, I am repeating, again, when I say that their misconduct in the past justifies the court in putting them in a different class from other people.

As to Paragraph 31, the suggestion is made by Owens that Paragraph 31 as now drawn is in conflict with Para- [fol. 13403] graphs 22, 23 and 24. We do not think it is. We think Your Honor, in his opinion, at Page 183 of our printed copy, apparently wanted to get notice of all new agreements. But we are perfectly willing to adopt their suggestion, namely, that Paragraph 31, after the word "glassware"—I am sorry—after the word "glassware"

in the last line on Page 25, to insert "excluding future agreements entered into in pursuance of Paragraphs 22, 23 and 24 of this judgment." We have no objection to the insertion of these words, if Your Honor thinks they are in conformity with Your Honor's views.

As to Paragraph 33, which relates to an injunction against stockholders: as I understand the record in this case, particularly near the end of the trial, it was claimed by the defendants that very little if any stock was held by any of the defendants in other defendant corporations, except those that held stock in Hartford. I believe counsel for Owens presented a piece of paper showing only one Owens executive had, I think, a few shares in another defendant corporation.

If that is true, it seems to me they ought to be directed immediately to get rid of stock in any one of these defendant corporations, and any other company in the glassware industry where they are competitors. I do not want to go over the proof, particularly Mr. Levis' conduct in connection with the acquisition of stock in Thatcher and Hazel-Atlas, and the purposes for which he acquired that [fol. 13404] stock; but the record is clear that the injunction ought to be definite and certain, and he should not be permitted to have any stock in any of these competing companies.

To the extent that they ought to be permitted to hold stock in investment trusts, &c., it seems to me that we should have no objection whatsoever if they be permitted to do that.

It was suggested that Paragraph 33 would prevent these gentlemen from owning stock in Kresge, Woolworth, Sears-Roebuck and other companies, because those companies sell glassware. But our injunctive provision says that it be and is hereby enjoined from holding controlling capital stock, bonds, "or other evidences of indebtedness of more than one (1) corporation engaged either in the manufacture *and* sale of glassware"—not "or sale." The company has to make glassware and sell glassware. As far as I know—and we certainly looked into the evidence in this industry, in this case—I believe the court did and everybody else—Kresge is not making glassware; neither is Woolworth.

This is what they are worried about. After we open up the industry, and the Supreme Court affirms it, some six or eight months from now, Kresge or Woolworth may make application to make glassware, or, more likely, some of the breweries, or some of the large can companies, in view of the difficulty of getting tin, that those companies [fol. 13405] will be engaged in the manufacture and sale of glassware; and these defendants can acquire stock and get control of some of these other companies who are manufacturing and selling glassware. They may be primarily engaged in some other business and not primarily engaged in the manufacture of glassware. They want to do the same thing there.

This thought comes to mind. Mr. Levis is a director of, I think, National Distillers. Maybe they will go into the glassware business. He wants to be able to stay on that board—I doubt whether he should be on in view of the record of this case—because that company is not primarily engaged in the manufacture of glassware. I submit, Your Honor, when this industry is opened, these defendants who have engaged in practices which Your Honor has held unlawful should be prevented from being either a director or a stockholder of those competing companies.

Therefore, we object to the word "primary," and we think it should not be inserted in the decree anywhere.

On this 180 days: I do not know where we got that from. I suppose I am responsible for it. It is too short. I am sure Your Honor will do the fair thing. Counsel for Corning said we agreed in the consent decree. I could spend a lot of time on the consent decree. I will talk only about what counsel for Corning said. He said we agreed to five years there. We did not win the case at that time; we were talking about settlement.

[fol. 13406] Secondly, it was specifically provided that they could not vote during that five-year period. If Your Honor gives them any period like five years, there ought to be a provision that during that period, they cannot vote stock except for getting a quorum. That was in the consent decree.

It seems to me there ought to be a period of time which Your Honor thinks is reasonable. I think five years is too long. Six months may be too short. We think it should be reasonable: perhaps a year and a half or two years. But

if it is going to be five years, as perhaps the consent decree had it, I submit that the voting rights should be taken away from the Hartford stockholders, which include Houghton, I. J. Collins and the other gentlemen referred to in our decree.

Counsel for Owens have put a paragraph in their redraft which says in substance that they shall not be in contempt of this paragraph once they come to the court first. In our Paragraph 57 we have provided that any one at any time can come to court and ask for appropriate relief from anything that is onerous. It seems to me that we ought to leave it that way.

I am puzzled about Owens' position on divestiture of stock. Counsel said one defendant, Mr. Nesbitt, had one hundred shares of stock in the other defendants. If they have a lot of stock in the other glass companies—Owens is pretty powerful in this industry—every defendant in the case ought to be required to divest himself of every share of [fol. 13407] stock in any other competing company. That has been one of the bad features of the industry.

If there are some mitigating circumstances, some compelling reason why they should not, they can make application to the court, and we can have the evidence spread out before Your Honor.

As to Paragraph 34, there, too, counsel for Owens suggests that there be an insertion that they should only indicate to the court the sales made in connection with the companies or other corporations engaged primarily in the manufacture and sale of glassware. For the same reasons objected to before, I object to that language.

Some one objected to the fact they will not know who the purchaser is because the sale was made through a broker. There, too, relief can be had to the court. If all the broker knows is that it was sold through another broker, he can give the court that information. It may be our job to find out.

As to Paragraph 36, the government admits an error. We never intended to try to have Owens divest itself of the stock of the Libbey Glass Company. We are going to prepare a new 36, with A and B. A will enjoin any corporate defendant from acquiring the assets or stock of another corporate defendant. B will enjoin the defendants or any of them from acquiring the assets, stock, evidences of in-

debtedness, of any other company engaged in the making [fol. 13408] of glassware, or machines used in the manufacture of glassware; having the proviso that it shall not apply to shares of stock in existing subsidiaries held either by the corporations or individuals. We will get them up in connection with our memorandum to be submitted on Wednesday. We will have that draft so that everybody can see it.

We do object to the proposal in the Owens draft that there be a hearing in connection with any acquisition; and that the acquisition shall be prevented only if it tends to substantially lessen competition. We think that would call for a long trial. We think that the court's intent was indicated by the opinion, that they should not have any stock in any of the competing companies; or evidence of indebtedness.

As to the paragraphs relating to the Glass Container Association: we tried to follow the court's opinion, and I think we succeeded. It seems to me that to require a change in the certificate of incorporation in order to carry out the court's views is something that is absolutely necessary; because decrees are sometimes misleading; that certificates of incorporation are the guide to the officers and directors. It is a perfectly proper request; and we submit that it should be granted.

As to Paragraph 38, it seems to us that if the entire board resigns, and they submit a new panel which includes not many of those defendants in this case, or those employed by the defendants, certainly the court and government coun- [fol. 13409] sel will acquiesce in their sitting on the board and acting as officers.

As to Paragraph 40, relating to practices, and Paragraph 1, and Sub-Paragraph 1, 40 applies only where there is a combination and conspiracy; and the practices which we are trying to prevent are practices which we think the record shows were indulged in.

As to Paragraphs 2 and 3, they are limitations in an effort to prevent price-fixing through allocations and limitations on production.

It was stated by some counsel that the paragraph as drawn would prevent individuals within a company from talking among themselves. We are perfectly satisfied to make it clear that it was not intended to cover that. We

will draft appropriate language to indicate that it was not intended to cover a situation where two employees of an association, or two employees of any of the defendants, wanted to discuss matters among themselves.

As to Paragraph 46, counsel for Hazel-Atlas said that paragraph as drawn would seem to require Hazel to make payments under the impounding order, and not the Receiver. We do not so construe it. It seems to me that the Receiver, as long as Hazel pays into the fund, will have to either pay into the fund or obtain instructions from the court; so that the impounding officer will have the amounts which either party would be entitled to if the case were reversed on appeal.

[fol. 13410] As to Paragraph 49, raised by counsel for Lynch, it is true, Your Honor, that the opinion does not specifically refer in the relief part to this form of relief; but, as I pointed out, I don't think the court intended it to be all-inclusive. The record is clear. The court made findings of fact and conclusions of law that the acquisition was illegal. It was one of those things in the case. I think the Court is very familiar not only with the evidence, but with the law. I submit that there should be an order of divestiture. If they have not any real estate, they cannot be divested. You cannot do it if you have not got it.

And if all you have left are machines, the machines could not be duplicated during the War period, and the divestiture can be postponed until after the War.

I suggest that the paragraph stand; with the proviso, which we shall draft, that it shall not become effective until one year after the cessation of hostilities: which has been drafted in other decrees drawn by the government.

There was a criticism of Paragraph 51 that it would prevent these defendants from acquiring from others than their employes patents in the same field. I should like to point out that the definition is one that is carefully drawn, based on some of the arguments made before Your Honor at various times during the case; and in any event, we [fol. 13411] have specifically provided that any defendant can obtain a non-exclusive license; that is provided in the Sub-Paragraphs 1 and 2.

Criticism was made of Paragraph 52 because it would prevent anyone from making any progress. This paragraph, Your Honor, is directed to the practices which were

referred to from time to time during the trial, and particularly in a certain exhibit, I think, Exhibit 88; to the practice of blocking off and fencing in. We have specifically provided in Sub-Paragraph B that it is operative where it is done with the intention of not making commercial use. It seems to me that paragraph will prevent the contingency happening that counsel for Hazel-Atlas were worried about.

As to Paragraph 53, counsel indicated that as drafted it would prevent an exchange of information between employes of the same company. We will be glad to submit a modification which will permit the exchange of information between employes of the same company.

There is an error on Page 43. In Paragraph F, third line, it says "partner." It should be "party." A stenographer's error.

Paragraph 54, it was stated by counsel for Hazel-Atlas, would prevent anyone from getting any patents out. But I think, if it is carefully read, it is directed to combining, conspiring or agreeing with another person to obstruct, [fol. 13412] hinder, harass or delay any other applicant in the Patent Office. I think if Your Honor will read it carefully, you will see that it is directed to practices that the Court found were improper.

As to Paragraph 55, we are willing to adopt the suggestions made by various counsel, namely, that this provision for visitation should be on reasonable notice to the defendants; and subject to any legally recognized principle; and will so draft the paragraph.

But I don't think it ought to have the provision that it should be reviewed by the Court. In the Univis case—a copy of the final decree will be submitted to Your Honor—in that case the government won part of the case and lost part of the case. In the final decree, in which there was some difference of opinion as to the form, there was a provision for visitation with notice subject to this privilege; but there was no privilege provided for review by the court. It seems to me we ought to take that language. I will submit it to Your Honor with copies to counsel in a memorandum which will be filed on Wednesday.

There are a few other matters. Paragraph 57, which is a paragraph providing for applications to the court for relief from the decree: this would provide ample opportunity to

go to the court for relief in any situation which turned out to be unfair to a particular defendant.

[fol. 1343] We do, however, object to the proposed 57-C, submitted by Owens, because we believe that it might result in carrying on some of the practices which the court has found improper, through the guise of some other administrative order of the War Production Board. I know of no order of the War Production Board with which the present decree is in conflict. If there is, we should like to have it pointed out. If there is not, and something comes along which calls for relief, I should think there would be no difficulty in getting up the appropriate application. But certainly to have the broad general statement that this decree shall in effect be overruled by what some administrative agency might do, or by some person whose purpose none of us knows, I think might result in a vitiation of everything the government has been trying to do, and, I believe, the court would have done, in this industry.

Similarly we object to Paragraph D, submitted in the draft by Owens, which states that this decree shall not be operative in connection with certain transactions or in connection with certain laws. I think the decree, if limited, as it will be, to United States patents and patent applications, will have a clear periphery, and should not further be delimited.

As to Paragraph 58: that is the paragraph which provides Paragraphs 10 to 18, and Paragraph 20, which are those relating to the receivership, and Paragraphs 44 to 46, shall be operative immediately: I don't think there [fol. 13414] can be any question, other than a general objection to the court's ruling to Paragraphs 10 to 18 and Paragraph 20 continuing without any stay; because, as I read Your Honor's opinion, you have in mind that the receivership shall continue throughout the period.

44 relates to the 400 odd thousand dollars which Ball Brothers are directed to pay back. It seems to me they ought to pay it to the Clerk of the Court.

45 has two parts. One part provides for the impounding of $112,500 paid by Hartford to Corning. That should be paid over, and not stayed.

Its second part provides for the transfer of the three

patents, and can be stayed. We will modify that and make 45 two paragraphs.

• • • • • • •

[fol. 13415] Mr. Williams: If Your Honor please, there is some question in my mind as to whether the exceptions previously taken were complete.

Owens and related defendants object and except to the findings of fact and conclusions of law drawn by the court, for the reason that said findings and conclusions are not supported by the evidence and are contrary to the evidence.

Secondly, Owens and related defendants except to the [fol. 13416] refusal of the court to adopt the findings of fact and conclusions of law offered by these defendants. And said defendants now renew their request and move the court to adopt said findings and conclusions so suggested and proposed by them.

• • • • • • •

[fol. 13417] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION BY BUCK GLASS CO., ET AL. FOR LEAVE TO APPEAR AS AMICI CURIAE—Filed March 30, 1942

To the Honorable Frank L. Kloeb, the Judge of said Court:

The Buck Glass Company, a Maryland corporation; Latchford-Marble Glass Company, a California corporation; Maywood Glass Company, a California corporation; Northwestern Glass Company, a Washington corporation; Chattanooga Glass Company, a Tennessee corporation; J. T. & A. Hamilton Company, a Pennsylvania corporation; Laurens Glass Works, Inc., a South Carolina corporation; Maryland Glass Corporation, a Maryland corporation; Universal Glass Products Company, a West Virginia corporation; The Diamond Glass Company, a Pennsylvania corporation; T. C. Wheaton Company, a New Jersey corporation; Foster-Forbes Glass Company, an Indiana corporation, and Pierce Glass Company, a Pennsylvania corporation, move this Honorable Court for leave to have Walter H. Buck, Esq., of the Baltimore Bar, their Attorney, a member of

the Bar of the Supreme Court of the United States and of the Court of Appeals of Maryland, to appear as *amicus curiae* herein, and to participate in the argument and in the filing of briefs in the above entitled cause. The interests of the parties to this motion are as follows:

[fol. 13418] 1. That all the parties to this Motion are engaged in the manufacture and sale of glassware throughout the United States.

2. That the complaint was filed herein for relief against the defendants under the Act of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", commonly known as the Sherman Act, and under Section 3 of the Act of October 15, 1914, entitled "An Act to Supplement Existing Laws Against Restraints and Monopolies and for Other Purposes", commonly known as the Clayton Act. That practically all the defendants herein are engaged either in the manufacture of glassware, the manufacture of machinery and equipment used in making glassware, or in the leasing or licensing, whether or not under patents, of the machinery used in such manufacture.

3. That the complaint seeks among other relief the virtual or actual dissolution of the defendant, the Hartford-Empire Company, which said company has the plant and the extensive technical research and experimental departments whereby it is enabled from time to time to supply and to keep supplied to the parties to this motion and to others the most modern and economical glassmaking machinery and equipment and the technical service for the installation and proper functioning of the same, and said defendant company is also engaged in the leasing or licensing under patents of said machinery and equipment, and the parties to this motion, not being defendants herein, oppose the dissolution of said defendant company for the following reasons:

(a) That in order for glassware manufacturers to keep their plants in a competitive condition, it has been found necessary within the last two decades to re-equip their [fol. 13419] plants with more modern machinery and equipment a number of times.

(b) That all the parties to this motion are what may be commonly termed "medium-sized and small" business

enterprises in the glass industry, and by reason of that fact none of them can or does maintain the technical research and experimental departments necessary to keep their plants supplied with modern machinery and equipment, but rely exclusively upon the defendant, the Hartford-Empire Company for such services.

(c) That, however, certain of the larger glass manufacturers, defendants herein, are able because of the volume of their business to maintain and do maintain the technical research and experimental departments necessary to keep themselves constantly supplied with all the newest and best methods in the manufacture of glassware.

(d) That if any decree entered herein shall have the practical effect of destroying or in any way substantially interfering with the services now rendered by the Hartford-Empire Company, defendant, to the parties to this motion and to others, the result will be that within a few years the medium-sized and small glass manufacturers, including the parties to this motion, being unable themselves to supply such extensive services and to obtain such services as are now supplied to them by the defendant, the Hartford-Empire Company, will be unable to compete with the few large glass manufacturers, who, as aforesaid, are able to supply such services for themselves, and thereby the petitioners herein will be gradually forced out of business, and a few large manufacturers will have a virtual monopoly of the glassware business in the United States through no fault or act of their own.

[fols. 13420-13421] Wherefore, your petitioners move this Honorable Court as aforesaid.

Respectfully submitted, The Buck Glass Company, Latchford-Marble Glass Company, Maywood Glass Company, Northwestern Glass Company, Chattanooga Glass Company, J. T. & A. Hamilton Company, Laurens Glass Works, Inc., Maryland Glass Corporation, Universal Glass Products Company, The Diamond Glass Company, T. C. Wheaton Company, Foster-Forbes Glass Company, Pierce Glass Company, By Walter H. Buck (Signed) Their Attorney, 809-811 Union Trust Building, Baltimore, Md.

Let the motion be granted as prayed.

——— ———, United States District Judge.

[fol. 13422] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OVERRULING MOTION OF BUCK GLASS CO., ET AL.—May 13, 1942

This day this cause came on to be heard upon the motion and argument of the Buck Glass Company, and others, for leave to have Walter H. Buck, Esquire, their Attorney, to appear as amicus curiae herein and to participate in the argument and in the filing of briefs in the above entitled cause, and the Court being fully advised in the premises overrules such motion.

FLK

IN UNITED STATES DISTRICT COURT

[fol. 13423] [File endorsement omitted]

[Title omitted]

* * * * * * *

PLAINTIFF'S PROPOSED FINDINGS OF FACT—Filed July 18, 1942

Jurisdiction and Venue

1. The contracts, combinations and conspiracies hereinafter found to exist, have been and are being conceived, carried out, and made effective in part within the Western Division of the Northern District of Ohio, and many of the acts done in pursuance thereof have been performed by the defendants, or some of them, and their respective representatives within said Division of said District. Owens-Illinois Glass Company and certain others of the defendants conduct their business and are found within the said Division of said District. The interstate trade and commerce in glassware herein involved are carried on in part within said District and Division.

2. Each of the corporate defendants, excepting the defendants Empire Machine and Glass Container Association, is engaged in trade and commerce between and among the several states of the United States (Ex. 1586, Cornings Ans.—Par. 27, O-I Ans.—Par. 27, H-A Ans.—Par. 27,

Thatcher Ans.—Par. 15, Anchor Hocking Ans.—Par. 27, Lynch Ans.—Par. 13, BB Ans.—Par. 9, Liberty Ans.—Par. 8).

[fol. 13424] 3. The glassmaking machinery and the various kinds of glassware referred to herein are manufactured in various localities in different states and are shipped and distributed through the channels of interstate trade and commerce (H-E Ans.—Par. 28; Corning Ans.—Par. 28; O-I Ans.—Par. 28; H-A Ans.—Par. 28; Thatcher Ans.—Par. 16; AH Ans.—Par. 28; BB Ans.—Par. 10; Liberty Ans.—Par. 9; LC Ans.—Par. 14).

Description of Defendants

4. Defendant Hartford-Empire Company (sometimes hereinafter referred to as "Hartford") is a corporation organized in June 1922 (2097), which succeeded to the assets of its predecessor, Hartford-Fairmont Company (sometimes hereinafter referred to as "Hartford-Fairmont") (Ex. 16). Hartford-Fairmont was organized in 1912 by (1) Beech-Nut Packing Co. (hereinafter sometimes referred to as "Beech-Nut") and Bartlett Arkell, President of Beech-Nut (5-C); (2) Monongah Glass Company (hereinafter sometimes referred to as "Monongah"), a manufacturer of glassware; and (3) a group of engineers residing in Hartford, Connecticut (5-6). Hartford is engaged in the acquisition and development of inventions and patents relating to machinery for the manufacture of glassware, and the leasing and licensing of such machinery (H-E Ans.—Par 3). Hartford-Empire Company has most of the glassmaking machinery which it licenses and leases manufactured for it by Hartford Special Machinery Co. (13).

3. Defendant Corning Glass Works is a corporation organized in 1936 (Corning Ans.—Par. 4). This defendant is the successor of a corporation of the same name, incorporated in 1911, which was in turn successor to the business of a corporation originally incorporated in 1875 (*ibid.*). (Corning Glass Works, and its predecessors, are sometime hereinafter referred to as "Corning"). Corning (with its subsidiaries) is one of the largest manufacturers and distributors of glassware in the United States, and is engaged principally in the production and distribution of incandescent lamp bulbs, signal and optical ware, heat-resistant ware, and other forms of specialty ware (*ibid.*).

[fol. 13425] 6. Defendant Empire Machine Company (sometimes hereinafter referred to as "Empire Machine") was a corporation organized in 1909 (Empire-Machine Ans.—Par. 5). Empire Machine, until 1922, was the machine development company for Corning (Ex. 16—p. 3, 8600). 90% of the stock of Empire Machine was owned by stockholders of Corning (EM Ans.—Par. 5). Stockholders of Empire Machine, while said stockholders, owned in excess of 50% of the stock of Corning (Ex. 1582). From 1922 until 1941, Empire Machine owned about 43.1% of the outstanding common stock of Hartford (2097; Exs. 16, 1583; Empire Machine Ans.—Par. 5). On January 8, 1941, Empire Machine was dissolved (Ex. C-5653).

7. Defendant Owens-Illinois Glass Company (sometimes hereinafter referred to as "Owens") is a corporation, incorporated in 1907, under the name of The Owens Bottle-Machine Company, which changed its name to The Owens Bottle Company in 1919 (O-I Ans.—Par. 7). On April 17, 1929, it again changed its name to Owens-Illinois Glass Company in connection with its acquisition of part of the assets of Illinois Glass Company (sometimes hereinafter referred to as "Illinois") (*ibid.*). Defendant Owens (with its subsidiaries) is the largest manufacturer and distributor of glass containers in the United States (*ibid.*), and the second largest manufacturer and distributor of milk bottles in the United States (*ibid.*).

8. After Illinois sold a substantial part of its assets to Owens, it acquired corporate shares in other companies in the glass industry, including Owens, Hazel-Atlas Glass Company, Lynch Corporation, Thatcher Manufacturing Co., and Anchor Hocking Glass Corporation (O-I Ans. Par. 12). Illinois was dissolved in September 1938 (2697).

9. Defendant Hazel-Atlas Glass Company (sometimes hereinafter referred to as "Hazel" or as "Hazel-Atlas") is a corporation originally incorporated in 1901 (H-A Ans. —Par. 8). Hazel-Atlas (with its subsidiaries) is the second largest manufacturer and distributor of glass containers in the United States (*ibid.*).

[fol. 13426] 10. Defendant Thatcher Manufacturing Company (sometimes hereinafter referred to as "Thatcher") is a corporation which was organized in 1905 (Thatcher Ans.—Par. 6). Thatcher (with its subsidiaries) is the larg-

est manufacturer and distributor of milk bottles in the United States.

11. Defendant Lynch Corporation (sometimes hereinafter referred to as "Lynch") is a corporation, having been incorporated in 1928 under the name of Lynch Glass Machine Company, and reincorporated in 1930 (LC Ans.—Par. 4). In 1928, Lynch took over the business of certain companies that had been manufacturers of glass machinery since 1917 (*ibid.*). It is the largest manufacturer of forming machines for the production of glassware in the United States (*ibid.*).

12. Defendant Anchor Hocking Glass Corporation (sometimes hereinafter referred to as "Anchor Hocking") is a corporation, originally incorporated under the name of Anchor Cap Corporation in 1928 (AH Ans.—Par. 11) as a holding company for Capstan Glass Company (hereinafter sometimes referred to as "Capstan") (a manufacturer of glass containers), Anchor Cap and Closure Corporation, and certain other small companies (2544). In 1934, Anchor Cap Corporation bought the stock of Salem Glass Works (sometimes hereinafter referred to as "Salem"), a manufacturer of a general line of glass containers (2582). On December 31, 1937, the name of Anchor Cap Corporation was changed to Anchor Hocking Glass Corporation (2545). Immediately thereafter, it acquired the assets of Hocking Glass Company (sometimes hereinafter referred to as "Hocking"). Anchor Hocking (with its subsidiaries) is the third largest manufacturer and distributor of glass containers in the United States (AH Ans.—Par. 11).

13. General Glass Corporation (hereinafter sometimes referred to as "General") was organized on April 4, 1931 by Hocking and Thatcher, each of which acquired half of the stock of General (4151, Ex. 1140). Hocking acquired Thatcher's stock interest in General in 1935 (Exs. 852, [fol. 13427] 1167). General was dissolved in 1938 (6387).

14. Defendant, Ball Brothers Company (sometimes hereinafter referred to as "Ball Bros.") is a corporation which, through its predecessor corporations, has been in business since 1882 (BB Ans.—Par. 4). Ball Brothers (with its subsidiaries) is the largest manufacturer and distributor of glass fruit jars in the United States (*ibid.*).

15. Defendant Liberty Glass Company (hereinafter sometimes referred to as "Liberty") is a corporation organized in 1919 (Liberty Ans.—Par. 4). It is the fourth largest manufacturer and distributor of glass milk bottles in the United States (Ex. CCA-5188).

16. Defendant, Glass Container Association of America, Inc. (sometimes hereinafter referred to as "Glass Container Association", or as the "Association") is a corporation organized in 1919 (Ex. 1716). Prior to 1933, its members manufactured 82% of the glass containers made in the United States; thereafter and until the present its membership has comprised concerns which have manufactured 96% of the glass containers made in the United States (G. C. A. br. in support of mo. to dism., p. 6). Each of the defendants, Owens, Hazel-Atlas, Liberty Anchor Hocking (or its subsidiaries), Thatcher, Ball Brothers, Lynch and Hartford has been, since at least 1933, and now is a member of the Association (4990, 5, 7; Exs. GCA 5188, 1716—pars. 30, 33).

17. The individual defendants, F. Goodwin Smith, Bartlett Arkell, Alexander D. Falck, Robson D. Brown, Roger M. Eldred, Karl E. Peiler, Arthur T. Safford, Jr., Theodore L. Champeau, A. M. Pease, Amory Houghton and Arthur A. Houghton, Jr., have been and are officers and/or directors, and have participated and do participate in the direction and management, of defendant Hartford (HE Ans.—Par. 17). Each of such individual defendants has approved, authorized, ordered and done some of the acts hereinafter found to have been performed by the defendant Hartford (Complaint and H-E Ans.—Par. 17).

17a. Defendant Isaac J. Collins was simultaneously Pres- [fol. 13428] ident of Hocking and a Director of Hartford from May 4, 1926 until December 31, 1937 (4014, 4027-8, 1582). Collins, as a Director of Hartford, participated in the direction and management of defendant Hartford (Exs. 2005, 1644, 1154, 160), and approved, authorized, ordered and/or did some of the acts herein found to have been performed by defendant Hartford.

18. The individual defendants, Alexander D. Falck, Eugene C. Sullivan, Amory Houghton, Arthur A. Houghton, Jr., William H. Curtiss and J. L. Peden, have been and are officers and/or directors, and have participated

and now participate in the direction and management of defendant Corning (Corning Ans.—Par. 18). Each of such individual defendants has approved, authorized, ordered and/or done some of the acts hereinafter found to have been performed by defendant Corning (*ibid*).

19. The individual defendants, Alexander D. Falck, Amory Houghton and Arthur A. Houghton, Jr., had been officers and/or directors of defendant Empire Machine and participated in the direction and management of defendant Empire Machine for many years prior to its dissolution in 1941 (Empire Machine Ans.—Par. 19), and were officers and/or directors of the Empire Machine immediately prior to dissolution. Each of such individual defendants has approved, authorized, ordered or done some or all of the acts hereinafter found to have been performed by Empire Machine (*ibid*).

20. Defendant Arthur L. Day was a director of Empire Machine from 1909 until August 1, 1939 (Ex. 1929). He was Vice-President of Empire Machine from 1909 to 1912 (*ibid*). He was President of Empire Machine from 1912 to 1915 (*ibid*). He was Vice-President of Corning in 1919 and 1920 (8475, Ex. 7). As a Director of Empire Machine, and as a Vice-President of Corning, he participated in the [fol. 13429] direction and management of defendants Empire Machine and Corning, and approved, authorized, ordered and/or did some of the acts hereinafter found to have been performed by defendant Corning and by defendant Empire Machine (Complaint, Corning Ans.—Par. 18, Empire Machine Ans.—Par. 19).

21. Defendants William E. Levis, E. F. Martin, John H. McNerney, R. H. Barnard, C. B. Belknap, Harold Boeschenstein, W. H. Boshart, H. E. Collin, George P. Greenhalgh, W. W. Knight, F. H. McAdoo, C. J. Root and F. W. Schwenck, have been and are officers and/or directors, and have participated and now participate in the direction and management of defendant Owens (O-I Ans.—Par. 20). Each of such individual defendants has approved, authorized, ordered and/or done some of the acts hereinafter found to have been performed by defendant Owens. (*ibid.*)

22. Defendants J. Harrison McNash, Walter H. McClure, George S. Quay, L. C. Paull, H. W. Coe, William W. Hol-

loway and B. H. Seabright, have been and are officers and/or directors, and have participated and now participate in the direction and management of defendant Hazel-Atlas (H-A Ans.—Par. 21). Each of such individual defendants have approved, authorized, ordered and/or done some of the acts hereinafter found to have been performed by defendant Hazel-Atlas (*ibid.*).

23. Defendants H. C. Mandeville, E. F. Wellinghoff, S. G. H. Turner, Jervis Langdon, W. H. Mandeville, and F. W. Swan, have been and are officers or directors, and have participated and now participate in the direction and management of defendant Thatcher (Thatcher Ans.—Par 13). Defendant R. W. Niver was President and a director of Thatcher from 1928, or prior thereto, until January 1, 1941 (4985, Ex. 240). Defendant Stanton Griffis was a director of Thatcher from September 1928, or prior thereto, until January 1, 1941 (5408, 5412, 6358). Each of such individual defendants has approved, authorized, ordered and/or done some of the acts hereinafter found to have been performed by the defendant Thatcher (Thatcher Ans.—Par. 13).

[fol. 13430] 24. Defendants Thomas Chandler Werbe, E. G. Bridges, A. G. Doll, J. L. Watts, Uz McMurtrie and M. M. McCullough, have been and now are officers or directors, and have participated and now participate in the direction and management of defendant Lynch (LC Ans.—Par. 11). Said defendants have approved, authorized, ordered and/or done some of the acts hereinafter found to have been performed by defendant Lynch (*ibid.*).

25. Defendants Isaac J. Collins, J. D. Dilworth, W. V. Fisher, T. C. Fulton, Ernest Stauffen, Jr., B. E. Factor, C. D. King and H. C. Laughlin, have been and are officers or directors, and have participated and now participate in the direction and management of defendant Anchor Hocking (AH Ans.—Par. 25). Each of such defendants has approved, authorized, ordered and/or done some of the acts hereinafter found to have been performed by defendant Anchor Hocking (including its subsidiaries), and/or by Hocking, and/or by General, and/or by Salem, and/or by Capstan (*ibid.*).

26. Defendants Frank Clayton Ball, George A. Ball, W. H. Ball, Edmund F. Ball and Fred J. Petty, have been and

are now officers and directors, and have participated, and now participate in the direction and management of defendand Ball Brothers (BB Ans.—Par. 8). Each of such individual defendants has approved, authorized, ordered and/or done some of the acts hereinafter found to have been performed by Ball Brothers Company (*ibid.*).

[fol. 13431] 27. Defendant G. F. Rieman was president of Capstan from 1920 until December 31, 1937 (2544-5). From 1929 until December 31, 1937, he was a Director of Anchor Cap Corporation (now called Anchor Hocking) (*ibid*). From January 1, 1938, until August, 1939, he was Vice-President and a Director of Anchor Hocking (2546). He has been, since 1939, and is now an Assistant Vice-President of Ball Brothers (2546-7). As President of Capstan and as Vice-President and a Director of Anchor Cap Corporation, Rieman participated in the direction and management of defendant Anchor Hocking, and approved, authorized, ordered, and/or did some of the acts hereinafter found to have been performed by defendant Anchor Hocking.

28. Defendant Russell L. Davidson has been and now is a Vice-President and Director of Liberty (Liberty Ans. Par. 6). Russell L. Davidson has approved, authorized, ordered, and/or done some or all of the acts hereinafter found to have been performed by the defendant Liberty (See Ex. 1632).

29. Defendant Charles R. Stevenson has been Business Manager of Glass Container Association at all times since March, 1928, and defendant Emory G. Ackerman has been Acting Assistant Business Manager and Assistant Business Manager of Glass Container Association from October 1929 until January 1, 1941, at which time he became President of Thatcher (G. C. A. Ans.—Par. 10, 4985).

Description of Glass-Making Machinery.

30. Practically all glass containers are now made by automatic machinery. There are two separate and distinct methods used in the manufacture of glassware. One is known as the Owens Suction machine process, in which the charges of molten glass are sucked into the forming molds from a stationary or revolving pool of molten glass. The other process (hereinafter referred to as the gob feed

process) requires the use of a machine known as a feeder which causes molten glass to be extruded in drops or gobs through an orifice, and cut by a shears or otherwise, beneath the orifice so as to fall or slide into a forming machine which molds the glass into the desired shape. In both [fol. 13432] processes the final step involves the conveyance of the bottles by a conveyor into a lehr or oven where they are stacked in rows by a stacker and then drawn through the lehr during which process they are annealled.

1916 Contract Between Hartford-Fairmont Company and Empire Machine

31. Prior to June 30, 1916, Empire Machine "through * * * others" (Tr. 8600) had been engaged in the development and licensing of invention and machinery intended primarily for blowing glassware (Ex 16—p. 3). Hartford was at that time planning an extensive business of developing and licensing similar inventions and machinery (Ex. H-5001) and, by 1917, was already well launched on this venture (Exs. 16—Sched. D; H-5750).

32. On June 30, 1916, Hartford-Fairmont and Empire Machine entered into a contract (Ex. 1). Under its terms, Hartford-Fairmont granted Empire Machine an exclusive, divisible, royalty-free license under any patent rights Hartford had or might acquire on any apparatus or process disclosed in the Chamberlin (an Empire Machine inventor) applications relating to feeders, to make, vend, lease and use such apparatus or process in the manufacture of (a) "parts of electrical lamps", (b) "signal and optical glassware", (c) chemical-resistant and heat-resistant ware, (d) ovenware, and (e) mold-blown electrical ware—(hereinafter referred to as Corning's field) (Ex. 1—Sec. 6). Empire Machine granted Hartford a similar exclusive, royalty-free, divisible license under any patents or patent applications Empire Machine had or obtained on any apparatus or process disclosed in the Peiler (a Hartford inventor) applications to make, vend, lease and use such apparatus or process in the manufactur of (a) 'pressed glassware", (b) "wide and semi-wide mouth ware not blown in pastemolds", (c) "narrow-neck ware not blown in pastemolds and weighing more than seven (7) ounces", and (d) similar narrow-neck ware weighing seven ounces or less when made for beverage or food containers—(hereinafter referred to as

Hartford's field) (Ex. 1—§ 7). Hartford granted Empire [fol. 13433] Machine an exclusive, royalty-free, divisible license to make, use and sell any inventions embodied in Hartford's Paddle Feeder in the manufacture of ware in Empire's field (Ex. 1—§ 9). Hartford also granted Empire Machine a non-exclusive divisible license to make, use and sell inventions embodied in the Paddle Feeder for the manufacture of articles not falling in either Empire Machine's or Hartford's fields (Ex. 1—§ 10). The non-exclusive license was royalty free as to Empire Machine and Corning for the manufacture of illuminating and light diffusing glassware (Id.—Subsection (a)); but required the charging of royalties and license fees by Empire Machine when it sub-licensed others at rates not less than those charged by Hartford, and Empire Machine was required to pay over 75% of the royalties so collected to Hartford-Fairmont (Id.—Subsection (b)).

33. By entering into the agreement dated June 30, 1916, with Hartford-Fairmont, Empire Machine disabled itself from using certain types of glass feeders in connection with the manufacture of ordinary glass containers (Ex. H-5223).

34. The purpose and effect of the 1916 contract between Hartford-Fairmont and Empire Machine was to eliminate impending competition between Hartford-Fairmont, and Corning and Empire Machine, in the glassmaking machinery business.

35. The 1916 contract between Empire Machine and Hartford-Fairmont divided the fields of glassware between Hartford-Fairmont and its present and prospective licensees on the one hand and the Corning interests and their present and prospective licensees on the other (7267).

36. Under the 1916 contract, Hartford-Fairmont and the Corning interests combined to influence and control the manufacture and sale of glassware.

37. After the execution of the 1916 contract between Hart- [fol. 13434] ford-Fairmont and Empire Machine, both companies worked closely together (Exs. 1512, H-5217).

38. By the terms of the 1916 contract between Hartford-Fairmont and Empire Machine, and the construction placed upon it by the parties thereto, Hartford was prevented from licensing anyone to use, in the manufacture of ware in Em-

pire Machine's field, the Hartford Paddle Needle Feeder, which had been developed subsequent to June 30, 1916, as well as the Hartford Paddle Feeder (5728-9, Exs. H-5393, C-5665, p. 2).

Joint Acquisition by Hartford-Fairmont and Empire Machine of Steimer Patent Application

39. Hartford-Fairmont and Empire Machine, because of their belief that a feeder patent application filed by Theodore Steimer might dominate the Paddle Feeder and Peiler's "Heated Hood" patent applications (Ex 3), acquired the Steimer application in 1917 (Ex. 5). Thereafter, Hartford-Fairmont and Empire Machine divided the rights under Steimer "at least approximately along the lines" of their 1916 agreement (Exs. 5, H-5217), and the expenses of the Patent Solicitor for Steimer were shared equally between the two corporations (Ex. H-5217).

Hartford-Fairmont Acquired Hitchcock Patents.

40. In 1918, Hartford-Fairmont acquired the Hitchcock feeder patents Nos. 805,067 (Reissue 13,929) and 805,068, granted November 21, 1905 (Ex. 1866) because (a) of their probable value "in suppressing other feeders, particularly that of Tucker & Reeves; (b) to prevent Hitchcock's rights from being acquired" by Hartford's competitors, "and (c) because of the probability that any draw-back feeder" Hartford might use would infringe the Hitchcock claims (Ex. 1852). Hartford-Fairmont believed that its acquisition of the Hitchcock patents "might be made very useful in limiting competition" (Ex. 8); and that there was a good chance of establishing these patents "as a pioneer in the art of [fol. 13435] gob feeding" and thereby dominating all gob feeding devices during the life of the patents (*ibid*).

Hartford Grants Restrictive Licenses from 1916 to 1922.

41. From 1916 to 1922, Hartford-Fairmont granted a series of exclusive or restricted licenses (Ex. H-5750, pp. 1 & 2), to use its feeder inventions. These licenses were designed to protect the licensees from competition in certain fields of glassware (Ex. H-6111, §§ 26, 27). Each of these licenses was granted only in connection with, and as a part of, a lease by Hartford-Fairmont of its glassmaking ma-

chinery, including paddle feeders, paddle needle feeders, and Hartford milk bottle and Hartford narrow-neck forming machine (Exs. H-5750, pp. 1 & 2, 231 H-6111).

42. In 1920, Hartford-Fairmont granted Thatcher an exclusive license to use its paddle feeder and Hartford milk bottle machine for the manufacture of milk bottles and jars (Ex. 231) and for no other type of glassware (*ibid*). The license of Monongah was exclusive to use the paddle feeder for "pressed vacuum sealed containers" and certain types of tumblers (Ex. H-5750). The license granted to Hocking was exclusive for "lantern globes" and "gas globes" (*ibid*). Woodbury Glass Co. and Kearns-Gorsuch Glass Co. (sometimes referred to hereinafter as "Kearns-Gorsuch") were restricted to "blown glassware for the packing trade" with a covenant by Hartford "not to grant additional rights for the packing trade" (*ibid*). The licenses to Salem, Flaccus Co., Carr-Lowrey Glass Co. and Obear-Nester Glass Co. (sometimes hereinafter referred to as "Obear-Nester"), were restricted to "blown ware" excepting fruit jars, milk bottles and Corning's field (Ex. H-5750). The license to Beech-Nut Packing Company was restricted to pressed containers and blown containers to be used for its own products (*ibid*). The J. T. & A. Hamilton Co. license [fol. 13436] was restricted to beverage bottle (*ibid*), and the Maryland Glass Corp. license was restricted to "prescription ware in blue glass" and certain named miscelleaneous items (*ibid.*)

43. Illinois was licensed to use the Paddle Feeder with Hartford's Narrow Neck Forming Machine in the manufacture of "all blown containers" and certain other miscellaneous items, excluding ware falling in Corning's field, milk bottles, fruit jars, pressed ware, lantern and gas globes, and certain miscellaneous items. The agreement prevented Hartford from licensing others for the Paddle Feeder and Narrow Neck Forming Machine in Illinois' field of ware except (a) with the consent of Illinois, or (b) to replace existing licenses which might be terminated (Ex. H-6111—§ 26—pars. 1 & 2—Sched. C). Hartford also agreed for five years not to license more than 25 feeder and forming machine units, and then only to specified existing licensees or their substitutes, with a limit to the number of units to be licensed to any single licensee (*id.*—par. 2). Hartford was prevented from extending the fields of ware of existing li-

censees to include ware in Illinois' field except in the case of Kearns-Gorsuch (*id.*—pars. III, IV (a)).

Suits by Hartford-Fairmont Against United States Glass Company and Berney-Bond Glass Company

44. Between 1916 and 1926, so-called Federal, Miller, Drey, McCauley, Graham, Howard and Lott feeders were licensed, leased or otherwise used by various manufacurers of glassware (Ex. 8). These feeders competed with the Hartford feeders (*ibid*).

45. Early in 1920, Hartford filed suit against a Miller feeder user, United States Glass Company, for infringement of the Hitchcock patents owned by Hartford (6662-3, Ex. 973—List 3). Sometime later in 1920, Hartford-Fairmont filed another suit against a user of a Howard feeder, the Berney-Bond Glass Company, for infringement of the same patents (Ex. 973—List 3).

[fol. 13437] 45a. Hartford acquired the Hitchcock patents for the purpose of restraining the competition with it and its licensees afforded by other feeders while it was engaged in trying to induce the Patent Office to issue patents on its own applications. It thereafter brought the suits against United States Glass Company and Berney-Bond Glass Company for the same purpose (Exs. H-5405, 8, 1852).

46. Final decision was rendered in the suit against United States Glass Company in May, 1923, which was six months after the patents had expired (Exs. 610, H-5221). The Court held that the Miller feeder did not infringe the Hitchcock device, but raised some question as to whether the Hitchcock device was operative. *Hartford-Fairmont Company* v. *United States Glass Co.*, 2 F. 2d 109 (W. D. Pa.).

[fol. 13438] *Formation of Hartford-Empire and the 1922 Glass Contract with Corning and Empire Machine.*

47. Negotiations for combination of Empire Machine with Hartford-Fairmont commenced in August of 1919 (8540-1; Ex. 7). Representatives of Corning and Empire Machine informed Hartford that unless a combination was effected, the Corning interests would "immediately start an entirely separate company for intensive machine development—and that unquestionably this would create ad-

ditional competition" with Hartford-Fairmont (Ex. 7, pp. 3-4). Hartford-Fairmont believed that the competition of Empire Machine in the machinery field would "be a very disturbing factor" (Ex. 7, p. 6).

48. Although negotiations for a combination progressed through 1919, early in 1920, both Empire Machine and Hartford-Fairmont commenced independent development on new glass feeding devices (Exs. 14, 1513, 1984; see 7053).

49. Hartford-Fairmont had considered engaging in the production and distribution of glassware in 1915 and for some time thereafter (7014, Ex. H-5001).

50. The dominant purpose of the Corning interests in entering into the 1922 Agreement with Hartford (Ex. 19) was to maintain for Corning a monopoly in the production and distribution of certain kinds of glassware; namely, bulbs, tubing and cane, signal and optical ware, heat resistant and chemical resistant ware, ovenware, electrical ware, and a preferred position in the manufacture and distribution of laboratory ware and paste-mold ware (Exs. 15, 19, 1988, H-5004, p. 7, C-5663 and C-5665).

51. The dominant motive of Hartford-Fairmont in entering into the agreements with Corning and Empire Machine, was to strengthen Hartford's patent position in order to "dominate the entire glass industry" in the United States "as far as manufacturing methods are concerned" (Exs. 6, 9; 8540-1).

52. The contract of combination was executed on October 6, 1922 (Exs. 16, 19). By the terms of the Agreement for the Formation of Hartford-Empire Company (Ex. 16), [fol. 13439] Hartford-Fairmont, Empire Machine and the stockholders of both of these companies, agreed to organize Hartford-Empire Company by an exchange of the stock of Hartford-Fairmont for shares of Hartford-Empire stock, and by assignment to Hartford-Empire of most of the assets of Empire Machine in exchange for 40.5% of the authorized stock of Hartford-Empire Company. (This amounted to at least 43.1%, at all times thereafter, of the amount of the common stock of Hartford which was outstanding (Ex. 1583), and Empire Machine held this stock until its dissolution in January 1941). Empire Machine agreed to transfer to Hartford-Empire, free of charge, all future in-

ventions and patents (Ex. 16, § 5), plus a substantial share of the bulb royalties it would receive by virtue of its stock ownership in American Blank Company (Ex. 16, § 6).

52a. The parties agreed that after the organization of Hartford-Empire, Hartford-Fairmont, Empire Machine, Corning and Hartford would enter into an agreement called the Glass Contract (Ex. 19) in "substantially" the form attached to the Formation Agreement (Ex. 16, § 11). It was expressly provided that the Formation Agreement was to become "null and void in the event of the failure of the Corning Glass Works to enter into the Glass Contract." (*ibid.*).

52b. Approval of the owners of 65% of the stock or unanimous action by the Board of Directors was required to authorize Hartford-Empire to manufacture glassware commercially (Ex. 16—Sched. A, § 9 (e)).

53. Under Article IV of the Glass Contract (Ex. 19), the parties divided the fields of glassware into 10 ware divisions and apportioned the patent rights of each among 9 of the 10 divisions with specified provisions as to exclusiveness, divisibility, and royalties in each field (*ibid.*). Each party was to retain title to the inventions it developed, but the other parties were to be licensed to use them as provided in the apportionment under Article IV (*ibid.*). Corning obtained an exclusive license for bulbs, signal, optical, chemical-resistant and heat-resistant ware, ovenware, tubing, cane and some electrical ware, a non-exclusive license in laboratory, paste-mold and some electrical ware and a shop-[fol. 13440] right in some container and paste mold ware (*ibid.*). Hartford-Empire obtained an exclusive license in the so-called "container field" (Division J) (subject to the Corning shop-right) and in some laboratory and paste mold ware (*ibid.*). Hartford-Empire agreed not to sub-license glass formula rights for use with machines not licensed by it (*ibid.*). Each party agreed to permit the others to use its name in suing infringers on its patents; and expenses and proceeds from such suits were to be allocated (*ibid.*). Corning agreed not to grant any rights under its glass formulas for use in any ware in Hartford's field (*ibid.*).

54. The purpose of the parties in entering into the Formation Agreement and Glass Contract was to eliminate prospective competition between Hartford-Fairmont and

Corning and Empire Machine in the production and distribution of glassmaking machinery, and in the production and distribution of glassware. Neither Corning nor Empire Machine has ever developed and distributed any feeder or feeder-fed forming machine subsequent to 1922 (7935). Hartford has never manufactured glassware of any kind for commercial distribution (H-E Ans.—Par. 3).

55. The provision of the Formation Agreement preventing Hartford from manufacturing glassware without approval of 65% of the stock or the unanimous vote of the Board of Directors (Ex. 16—Sched. A—§ 9 (e)), was designed to give the Corning interests the power to prevent competition between Hartford and Corning in the production and sale of glassware (Ex. 15).

56. Of a total varying from eight or nine directors on Hartford's Board from January 1, 1923 to date there have always been at least four persons who were also directors of Corning or Empire Machine (8583). Corning and Empire Machine actively participated in the formulation of the policies and major decisions of Hartford (Ex. 676, p. 3). The stock interests and representation on the Board of Directors of Hartford by the Corning interests have been sufficient to give those interests power to exercise working control over Hartford (Exs. 271, 1987).

[fol. 13441] 57. Use of the machine developments alleged by the parties to be covered by patents or patent applications held by the Hartford and Corning interests has been for some time prior to 1938 and now is necessary for the successful commercial production of almost all types of glassware.

58. By the terms of the Glass Contract (Ex. 19), Corning was prevented from using the inventions of Empire Machine, Hartford-Fairmont or Hartford, in the production of glass containers.

59. Between 1929 and 1931, Corning desired rights from Hartford to manufacture glass containers (Corning Ans.—Par. 46; Exs. 391-2). Hartford refused to grant Corning this right because it desired "to limit competition between its licensees within reasonable bounds" (Ex. 392).

60. The effect of the Glass Contract was to exclude the entire glass container industry from those fields of ware

for which Corning held exclusive rights under the inventions of the parties to the Glass Contract (Ex. 19).

61. Hartford has, without exception, excluded every one of its feeder licensees from using inventions licensed by the Glass Contract for the manufacture of bulbs, heat-resistant ware, ovenware, and drawn tubing and cane (see 1104-5; Exs. 341, 350, 507, 377, 1319, 1310, 354, 363-8, 355-62, 1355, 1752-3, 1543, 1829, 199, 578, 142, 161, 151-2, 159, HE-5012, HE-5015-6, 157, HE-5013, 248, 154, 2002-3, 1605-37). In a few instances, after obtaining the consent of Corning, Hartford has licensed its feeders for the manufacture of signal and optical ware (Exs. 345-9, 352, 364, 1626, 1629, 1605, 1618). This consent was granted on condition that Corning received 40% of the royalties collected by Hartford on the production of this type of ware, and on the condition that each of the licensees, so licensed, would maintain "a reasonable minimum yearly production" (Ex. 352).

62. The result of these refusals upon the part of Hartford to license others to use its equipment in the manufacture of these types of ware, and of the refusal of Corning to [fol. 13442] permit Hartford to issue such licenses, has been to prevent the production of these types of ware by automatic means by others than Corning, except that McKee Glass Company succeeded in using a process which Hartford considered to be not a "very heavy" infringement of its patents for the manufacture of heat resistant ware (5259).

63. The result of the enforcement of the terms of the Glass Contract has been to create in Corning a monopolistic and dominating position in the United States with respect to the manufacture and distribution of heat-resistant and chemical-resistant ware, ovenware, tubing and cane and bulbs.

64. Although Hocking, at least from 1936 through 1937 (4174-5, 4186, Exs. 1168, 369, 374), and Anchor-Hocking from January 1, 1938, desired to enter into the manufacture of heat-resistant ware and attempted to obtain a license from Hartford for that purpose, they never secured such a license (2043) nor manufactured heat-resistant ware commercially until Anchor-Hocking did so after October, 1940 (4189).

The Peiler "Punty" Patent.

65. In 1917, a patent had issued to Danner covering a tube-drawing machine (Ex. H-5934), under which licenses were issued to Corning, General Electric Company, Kimble Glass Company and Libbey Glass Manufacturing Company (Ex. 695).

66. On February 23, 1926 Hartford obtained the Peiler Punty Patent (No. 1,574,736), and Dorsey, then representing Corning (Ex. 689—Par. 12), believed that the patent, if valid, covered the Danner machine (Ex. 689).

67. Under the terms of the Glass Contract, Corning would have received an exclusive license under this patent for tubing and cane, but would have been required to pay a royalty for use of the invention embodied in the patent (Ex. 19, Art. IV, § 7).

68. In order to avoid payment of royalty to Hartford and in order to extend the monopoly over the Danner machines from 1934 until February 23, 1943 (date of the ex-[fol. 13443] piration of the Peiler Punty Patent), Corning sought an exclusive royalty-free license under the Punty Patent (Exs. 689, 695).

70. On June 26, 1928, for a consideration of $350,000, Hartford granted Corning a royalty-free, exclusive, assignable, divisable license for the United States and Canada to make and sell machines embodying inventions covered by the Peiler Punty and certain other patents for the manufacture of tubing and cane only (Exs. 379, 1858).

71. On September 23, 1940, Hartford transferred to Corning full title to the Peiler Punty, Howard Autoblow and Smith Reissue Patents (Ex. H-5029) and agreed to pay to Corning $1,500,000 (later reduced to $1,125,000) in exchange for a cancellation of the Glass Contract.

72. The contracts of June 26, 1928 and September 23, 1940, both between Hartford and Corning, extended and perpetuated the monopoly created by the Glass Contract for Corning in tubing and cane.

The Howard "Autoblow" Patent

73. On July 13, 1926, the Howard Autoblow Patent (1,592,299) was issued to Howard, then a Hartford employee (Exs. 700, 973).

74. Pior to 1928, Corning had developed and used its 399 or Ribbon Machine for the manufacture of bulbs, but no patent was issued on it until 1931 (Ex. C-5527, Patent No. 1,790,397 to Woods and Gray).

75. By virtue of the Glass Contract, Corning had exclusive rights under the Howard Autoblow patent for the manufacture of bulbs, though subject to royalty payments, with the result that if the patent read on the ribbon machine Corning would have to pay royalty to Hartford on its bulb production (Ex. 19, Article IV, § 7, Ware Divisions A-D).

76. Corning demanded that Hartford grant Corning royalty-free, exclusive and divisible license for bulbs under the Howard Autoblow patent (Ex. 699). On January 23, 1930, Hartford and Corning entered into a "Special Agreement Amending Glass Contract" (Ex. 381), which gave Corning a royalty-free license under some of the claims made [fol. 13444] or broadened between October 14, 1924, and December 1, 1927, in any application of Hartford, insofar as they applied to ribbon fed machines and to straight line forming machines. This license was exclusive for bulbs, tubing and cane, heat-resistant ware, ovenware, electrical ware, and laboratory ware, non-exclusive for paste-mold ware, and Corning received a shop-right in the container field (Ex. 381, see Ex. 1763).

77. Sometime thereafter, it was discovered that the ribbon machine could be used for the manufacture of tumblers, which—when filled by packers—are containers (7935, 8560), and Corning thereafter produced tumblers for packers on these machines (Ex. C-6119—Par. 8).

78. On September 23, 1940, Hartford transferred full title to the Howard Autoblow Patent to Corning (Ex. H-5029).

79. The Smith Reissue Patent No. 19,439 dated January 22, 1935 (original Patent No. 1,896,870, dated February 7, 1933) was owned by Hartford. Hartford and Corning believed that it covered the so-called Corning "Torret Chain" machine, used in the manufacture of large bulbs and lamp chimneys (Exs. 1530-1). On September 23, 1940, Hartford transferred full title to the Smith Reissue Patent to Corning (Ex. H-5029).

80. The proportion that the annual operating income, before deduction of Federal Income taxes, bears to the annual net sales of Corning, in each of these years from 1923 through 1937. (Ex. 1577) is shown in the following table:

Year	Net Sales	Operating Income	%
1923	10,231,488	2,172,177	21.2
1924	9,788,781	1,964,716	20.0
1925	11,038,727	2,352,411	21.3
1926	11,899,753	2,938,479	24.7
1927	11,145,592	2,778,148	24.9
1928	11,347,499	3,239,500	28.5
1929	15,141,098	5,164,833	34.1
1930	9,891,960	1,971,237	19.8
1931	8,708,140	1,389,354	16.0
1932	6,993,112	783,129	11.2
1933	8,247,879	1,526,881	18.5
1934	10,106,970	1,753,376	17.3
1935	10,905,593	2,394,507	22.0
1936	13,636,139	3,104,590	22.8
1937	19,465,185	2,470,092	12.7

From 1923 through 1937, Corning enjoyed excessive [fol. 13445] profits, its operating net income averaging about 21% of its net sales (*ibid.*).

Hartford's Acquisition of Patents and Assets of Howard Company

81. Prior to 1922 the Howard Automatic Glass Machinery Company (hereinafter sometimes referred to as the "Howard Company") distributed feeders in competition with those of Hartford and Hartford-Fairmont (Ex. 1871). The cost of construction of the Howard feeder was less than that of the Hartford feeder (Exs. 61, § 11, 681, H-5405) and it was an efficient device (Ex. H-5749).

82. In 1922 there were 43 Howard feeders in the hands of 13 Howard licensees, each of whom was a manufacturer and distributor of glassware (Exs. 61, H-5749). At that time Hartford had 74 feeders under lease to 16 licensees (H-5749-50).

83. The royalty rates secured by Howard for the use of its feeders were substantially lower than those being se-

cured by Hartford for the use of its feeders (Ex. 58, Par. (f)).

84. From 1920 to 1922, Hartford sought to eliminate the competition of the Howard feeder (Exs. 1986, H-5399, 1889, 57, 58). Hartford also sought to acquire the Howard invention in order to achieve domination in the gob feeding art (Exs. 1522, 1925, 1955), and in order to give Hartford "a possible hold" on the feeding device then owned by Owens (Ex. 58). A third reason for the acquisition of Howard was in order to eliminate a feeder which might be used to produce ware in competition with Corning (*ibid.*). Hartford believed that the Howard patent applications dominated certain essential features of its own feeding devices (Ex. H-5835, p. 3).

85. Hartford also desired to acquire the Howard feeder business in order to prevent small producers of glassware from continuing in business and quoting "prices which would be detrimental to the general trade" (Exs. 1889, 56).

86. On June 23, 1922, Beech-Nut agreed to purchase all of the stock of the Howard Company held by stockholders who became party to the purchase agreement before August 20, 1922 (Ex. 61; see also Tr. 341). Beech-Nut had the Howard stock transferred to Hartford Special Machinery Co., which in turn had the Howard patents transferred to Hartford in February 1923, but retained in the Howard Company all of Howard's license rights and contracts (Ex. 62). Hartford and Beech-Nut secured from the Howard Company and all of its stockholders a covenant "to keep [fol. 13446] all facts of these negotiations and this agreement and all other facts bearing thereon entirely confidential and undisclosed" (Ex. 61, § 18). To the same end, Hartford sent Howard to England in the company of Dorsey (Ex. 59).

87. Hartford's purpose in acquiring Howard through Beech-Nut and Hartford Special Machinery Co., was to prevent Howard's licensees from discovering that they possessed the defense of estoppel against Hartford in the event that they refused to take licenses from Hartford, and thereby made it desirable for Hartford to bring suit against them (Ex. 58; *cf.* Ex. 80, Pars. 15-17).

88. By July 1923 all of the Howard licensees of any importance in the industry had consented to take licenses

from Hartford (Exs. 61, H-5750). Thereafter, Hartford Special Machinery Co., transferred to Hartford the ownership of all of Howard's assets and licenses (Ex. 63).

89. Following the acquisition of the Howard business, Hartford substantially raised the royalty rates of the former Howard licensees (Ex. H-6109—Sched. D).

90. The acquisition of Howard was also a step in Hartford's plan to harass outsiders, such as Miller and Tucker and Reeves, by means of interferences in the Patent Office for the purpose of compelling them to sell out to Hartford and thereby clear the way for the institution of Hartford's plan to obtain dominant patents by ex parte prosecution, after all opposition in the Patent Office had been removed.

90a. On August 31, 1922, a little more than two months after Hartford had acquired Howard (Ex. 61), the Patent Office suggested claims to Hartford for the purpose of interference (Ex. H-5220, p. 99). The suggested claims originated in the application for reissue of Howard patent No. 1,315,668 (Ex. H-5259, paper 107, p. 13). Hartford copied the suggested claims in the Bridges, Peiler and Steimer applications, of which it was the owner (Exs. 16, 973—list 2, H-6128), and on December 22, 1922, the eleven interferences of the 48,326 series were declared (Ex. 973).

90b. The last paragraph of Rule 94 of the Rules of Practice of the Patent Office provides:

Parties owning applications or patents which contain conflicting claims will be required to show cause why these claims shall not be eliminated from all but one of the applications or patents of common ownership.

As Hartford owned the Howard, Bridges, Steimer and Peiler applications, it was subject to the provisions of this rule. At the time the Patent Office suggested the claims to [fol. 13447] Hartford for the purpose of interference, it called Hartford's attention to this rule (Ex. H-5220, p. 102). Hartford, in reply, attacked the validity of the rule (Ex. H-5220, pp. 107-108). The record title of the Howard, Peiler and Steimer applications being in diverse hands, the Patent Office, after Hartford's refusal to be bound by Rule 94, declared the interferences.

90c. With the interferences declared, Hartford had accomplished its object of having a series of interferences

declared which would enable it to prosecute a number of its applications simultaneously in such interferences with the purpose of harassing outsiders, such as Miller and Tucker and Reeves, and forcing them to sell out to Hartford. Thereafter, the Beech-Nut Co. had the Howard stock transferred to Hartford Special Machinery Co., and on February 1, 1923, after the interferences of the 48,326 series had been declared, the latter in turn, had the Howard patents and applications transferred to Hartford, but retained in the Howard Co. all of Howard's license rights and contracts (Ex. 62). This assignment was not recorded by Hartford at this time, but record title to the Howard applications was left in the Howard Co., in order to avoid the requirement of election under Rule 94, if that issue should be raised, as it was raised (Ex. 1896) by any of Hartford's opponents in the interferences. The license rights were also left in the Howard Co. in order to afford a basis for argument against the requirement of election, if it should be raised by Hartford's opponents (Ex. 1897). No assignment from Howard to Hartford was recorded in the Patent Office until September 15, 1925 (Ex. 973, list 1), after Hartford's opponents, Miller and Tucker and Reeves had been acquired.

90d. Hartford avoided accepting an assignment of the Howard patents and applications until February 1, 1923 (Ex. 62) in an attempt to avoid being bound by the dates alleged by Howard in his preliminary statement, filed on January 21, 1923 (Ex. H-5259, paper 12).

Early Owens Licensing Policy

91. M. J. Owens in 1903 invented a machine for the manufacture of glassware by the suction process which was the first fully automatic method of making glassware (O-I Ans., par. 30).

92. Domination of the glassware industry by Owens commenced shortly after October 16, 1903, when that company obtained exclusive rights to the Owens suction machine in [fol. 13448] the glass container field (Ex. O-5209).

93. Owens thereafter granted exclusive rights in the suction machine to Thatcher in the milk bottle field (Exs. O-5211, O-5994, O-5212), Hazel-Atlas in the wide-mouth field (Ex. 909; tr. 3054, 5), Illinois in the narrow neck field

(Ex. O-6005), and Ball Bros. in the fruit jar field (Exs. O-5997, O-5213; 1496).

94. Owens retained as much influence as it could over the industry by requiring as consideration for its exclusive licenses substantial stock interests in its licensees (Exs. O-6014, p. 10, O-6009, O-5948, §§ 9 and 10, 909, par. 16).

95. The Owens policy, with relatively minor exceptions, was to license only manufacturers of types of bottles not made by Owens (Ex. O-6014, p. 10) and not to deal with the smaller concerns at all, even though of excellent standing (Ex. H-5138).

96. Owens in 1906 added to its licensing business the business of manufacturing glassware through its automatic process (Ex. O-6014, p. 6).

Owens and Hartford Relations—1916-1924.

97. The development of rival bottle manufacturing processes from 1916 to 1924 threatened Owens' domination as a licensor of glassmaking machinery and manufacturer of glass containers (9848, O br. p. 49, Exs. 23, 52).

98. Owens and Hartford were competitors from 1916 to 1934 in the development and licensing of gob feeding and forming machinery (Exs. O-6018, 20, 22, Tr. 10,033-10,040; Ex. H-5750).

98a. From 1916 to 1924 Owens sought to acquire control of all gob feeding concerns and patents for the purpose of dominating the gob field (O. br. p. 59, Exs. O-6024-6, Tr. 10,037-40).

98b. In February, 1918, Owens considered acquiring the Federal feeder (O-5026). In May, 1918, Owens secured an option on the Lott patents (Ex. O-6025) for the purpose of dominating Hartford, Federal (Ex. O-5024), and the whole gob feed art (10,037-40).

[fol. 13449] 99. In 1919 Owens attempted to purchase Hartford's patent rights for $2,000,000 which was refused (O. Ans. par. 57).

100. In 1920, Owens considered acquiring the Howard patents (Ex. 879).

101. In May 1921, Owens acquired exclusive rights under the Brookfield patents (Ex. 1,000) for the purpose of suing Hartford and controlling the gob feed art (10,003, 10,015).

Negotiations Leading to Owens-Hartford 1924 Agreement.

101a. Negotiations between Hartford and Owens leading to the 1924 contract commenced in December, 1921 (Ex. 23).

102. Corning participated in negotiations leading to the Hartford-Owens agreement of 1924 (2087, Exs. 25, 1512, H-5237, 1989, 1832, 1925, Tr. 1977).

103. Hartford carried on its negotiations with Owens with a view toward protecting Corning from the possible competition of Owens or its licensees in the non-container field. Owens in the course of the negotiations expressed its desire to enter Corning's field (Ex. 51, Tr. 5553). Owens considered entering the bulb or hard glass business (3002), and claimed a new development in bulbs (Ex. 26). Hartford understood that Owens had several applicants for licenses on its feeder in the non-container field (7108, Ex. 42), and that one such applicant, if licensed, would give Corning "a real competitor" (Ex. 42).

104. In April, 1923, while Hartford and Owens were negotiating, the case of Hartford against United States Glass Company was decided adversely to Hartford when the District Court held that the Miller feeder used by the defendant company did not infringe the Hitchcock patents, *Hartford-Fairmont Co.* v. *United States Glass Co.*, 2 F. 2d 109 (W. D. Pa.). Hartford recognized that a decision on appeal in the United States Glass Case, giving the Hitchcock patents the status of pioneer patents in the gob feeding art, would preclude it from attacking the status previously accorded to the Hitchcock patents by the Patent Office and [fol. 13450] would endanger its chances of prevailing in the pending Patent Office interferences of the 48,326 and 50,890 series, as well as its chances of ultimately obtaining patents controlling the gob feeding art (Exs. H-5400, paper 73, H-5631, H-5633, 973). To avoid these dangers, Hartford had first refrained from appealing in the *United States Glass Case* (8153).

105. During the Hartford-Owens negotiations, in June, 1923, Owens brought two suits for infringement against the

Hamilton Co., a Hartford licensee and a user of Hartford paddle needle and single feeders. One suit was brought jointly by Owens and Hazel-Atlas on the Brookfield patents, and the other suit was brought by Owens alone on the acquired "Big" and "Little" Lott patents (Exs. O-5953, O-6027, O-6028). These suits were brought primarily in an attempt by Owens to establish control over the gob feeding art by means of its Lott patents. Hartford intervened in the suits, and in its answer to the suit on the Lott patents alleged that these patents were anticipated by the Hitchcock patents (Ex. 1919).

106. The suit against Hamilton based upon the Lott patents, and Hartford's reliance upon the Hitchcock patents as a defense against those patents, forced Hartford to run the risk, inherent in an appeal in the *United States Glass Case*, of endangering its chances of establishing patent control over gob feeding. Hartford accepted this risk and entered an appeal in that case in December 1923 (8153 Ex. H-5632).

107. On January 25, 1924, Hartford, in furtherance of its defense in the Hamilton suit, held a demonstration of the Hitchcock feeder (Ex. 613), attended by representatives of Owens (6598; Ex. 1870). In this demonstration, the Hitchcock feeder was presented by Hartford as an operative gob feeder (Ex. 613).

108. At the time of the demonstration, Hartford and Owens were in interference in the patent Office and Hartford was contending that Peiler was the inventor of gob feeding, whereas its opponents, with the exception of Owens, were relying on the Hitchcock patents to obtain the dissolution of the interferences against Hartford (Ex. O-5076F), and were also relying upon Hartford's inconsistent contention in the *United States Glass Case* that the Hitchcock patents were the pioneer patents in the gob feeding art (Exs. 1893-4). At the demonstration, and shortly thereafter, a [fol. 13451] representative of Owens advised a representative of Hartford that in view of the demonstration Owens would have to amend its motion to dissolve the interferences to include Hitchcock as prior art based on the demonstration, and counsel for Hartford suggested that Owens delay such a motion pending the outcome of the negotiations for settlement then going on between Hartford and Owens (Exs.

613, 1995-6-7). Owens agreed to this suggestion (Exs. O-6076C, O-6076D, O-6076F). Thereafter, counsel for Owens suggested that if the parties got together, the facts of the demonstration should not be disclosed and should be kept a secret (Ex. H-5847).

109. After this demonstration, Hartford and Owens each recognized that the trial of the Hamilton suit and the resultant disclosure of the facts of the Hitchcock demonstration would not only endanger whatever chances either company had of establishing patent control over the gob feeding art, but also might throw that art open to unrestricted competition (Exs. H-5006, H-5847, 613, 1994, 1996, 1999). Rather than run those risks inherent in the trial of the Hamilton suit, Hartford and Owens decided to settle that suit and to dispose of the appeal in the *United States Glass Case* in a manner to be subsequently agreed upon (Exs. 618 and 619), and to enter into a combination with the object of enabling Hartford to obtain patent control over the gob feeding art for the joint benefit of both companies (Exs. 616, 618-20).

110. Hartford and Owens recognized that the conflicts and disputes between them as to gob feeding patents and inventions, and the competition between them in the manufacture and licensing of machinery if continued, would result in an open, competitive, and uncontrolled industry with respect to the manufacturing and licensing of glassmaking machinery, and also with respect to the manufacture, production, and sale of glass containers. Owens and Hartford were not interested primarily in developing their inventions and stimulating financial returns from the use of their patent rights, but were primarily interested in controlling the glassware industry (Exs. 26, 27, 37, 611, 1959, 1962, 52, 893).

1924 Hartford-Owens Agreement

111. On April 9, 1924, Hartford and Owens entered into [fol. 13452] an agreement entitled "General License Agreement" (Ex. 55), which provided in part:

a. Owens granted Hartford an exclusive license under all of its feeding and forming inventions held or acquired prior to July 1, 1941.

b. Hartford granted Owens a non-exclusive license to make and use its feeding and forming inventions for the manufacture of containers.

c. Hartford granted Owens a right to use 40 feeders and formers free of royalty up to $440,000 a year.

d. Hartford granted Owens the right to one-half of Hartford's divisable income, defined as the excess over $600,000 of its income from licensed inventions.

e. Hartford agreed in Section 22 not to grant a license under Owens' inventions without Owens' consent, except to existing Hartford licensees for the fields of ware covered by existing licenses or to a "Legitimate Glass Manufacturer" of sound commercial standing who was not a user of his own products, for types of ware made by such manufacturer within the 12 months prior to the contract.

f. Hartford and Owens each acknowledged the validity of the patents of the other and agreed actively to assist in establishing them.

g. Owens and Hartford agreed to give each other the right to join in the purchase of outside patent rights, each to bear one-half the cost.

112. After the 1924 agreement, representatives of Hartford and Owens had conferences to determine what disposition should be made of the pending Hamilton suit and the pending appeal in the *United States Glass Case* (Exs. 616, 618, 619). Owens not only advanced the view that a consent decree would best promote the purposes of the recent agreement (8088, Ex. H-5448), but also insisted that Hartford accept a consent decree in that suit, acknowledging infringement of the Lott patent (O-I br. p. 113). Hartford complied with this demand by Owens, and on June 28, 1924, accepted a consent decree in the Hamilton suit, acknowledging the validity of the Lott patents and admitting infringement of these patents by the Hartford feeders used by Hartford's licensee, Hamilton (Ex. HA-5081). Hartford and Owens agreed to accept the decision in the *United States Glass Case* (O-I br. p. 113) and in accordance with this agreement, Hartford withdrew its appeal in that case (8153). Hartford's acceptance of a consent decree in the Hamilton suit and its withdrawal of the appeal in the *United States Glass*

Case enabled Hartford and Owens to suppress the facts of [fol. 13453] the Hitchcock demonstration which, if revealed, would threaten whatever chances either company had of establishing patent control over gob feeding and might also throw the field open to unrestricted competition. The facts of the Hitchcock demonstration on January 25, 1924, were never disclosed to the court in the Hamilton suit (8019-20).

112a. Hartford's acceptance of a consent decree in the Hamilton suit was designed to give the Lott patents added importance in order to afford an intervening weapon against the common adversaries of Hartford and Owens, pending issuance of the Peiler patents (Ex. H-5448). The principal significance of Hartford's acceptance of a consent decree in the Hamilton suit was that it involved a concession on Hartford's part that the commercial form of feeder, then being licensed by Hartford, was dominated by the Lott patents. Whatever feeders were then in use under the license-lease agreements of Hartford were truly conceded to be within the domination of those two Lott patents. Both Hartford's single feeder and its paddle needle feeder were under this concession (Exs. O-6027, HA-5081, 1625, O-6076 Q—p. 2). After putting the single feeder into commercial use, Hartford gradually withdrew the paddle needle feeders from commercial use (Ex. H-5749) and never placed any new type of feeder on the market (6714). The effect of Hartford's acceptance of the consent decree in the Hamilton suit and the provisions of Section 22 of the 1924 contract was to give Owens a veto power over the licensing of all types of Hartford feeders in commercial use between 1924 and 1938, the expiration date of the Lott patents. The practical result of Hartford's acceptance of the consent decree in the Hamilton suit established a complete joint control over Hartford's feeders by both Owens and Hartford.

113. The purpose of Hartford and Owens in entering into the 1924 Agreement was to

[fol. 13454] a. Stabilize the prices of glassware (Exs. 879, 23, 26, 574, 37, 1892, H-5843, 1928).

b. Restrict the production of glassware (Exs. 1950, 574, 1892, H-5843, 1928).

c. Exclude outsiders from the glassware industry (Ex. 23).

d. Exclude users of bottles from the glassware industry (Ex. 55, § 22).

e. Effect a monopoly of all patents relating to glass-making machinery and the issuance of licenses thereunder (Exs. 879, 21, 679, 22, 1925, 50).

f. Eliminate competition of other manufacturers of glass-making machinery (Exs. H-5428, 1891, 679, 27, 31, 1954, 1892, 1958, H-5239, 49).

g. Allot the control of the licensing of suction to Owens and the control of the licensing of gob feeding to Hartford and Owens (Exs. 574, 1989, 32, 34, 36, 43, H-5422, p. 4, 49, 612, par. 23).

h. Avoid competition in glassware by the adoption of a restricted licensing policy by Hartford (Exs. 679, 32-5, 1925, 574, 612, par. 20).

114. By the 1924 agreement Owens was thereafter precluded from selling or licensing any of its gob-feeding machinery or its forming machinery (Ex. 55, § 22).

115. By licensing Owens only with respect to containers, the 1924 agreement implicitly excluded Owens from using or licensing patents in the non-container field (Ex. 55, Sections 1 and 3).

116. The 1924 agreement resulted in an arrangement which Hartford and Owens viewed as a partnership (1785, 6, Ex. 140).

117. Hartford and Owens recognized that the 1924 agreement was either illegal or of doubtful legality (Exs. 619, 73, H-5448, 303, 306, 1733, 662, 257, § 114, 562, 1790).

118. Hartford and Owens recognized that Section 22 of the 1924 agreement was either illegal or of doubtful legality (Exs. 1925, 612, Tr. 5554, Exs. 399, 1839, 665, 405, 406, 408, 1790).

119. Hartford and Owens attempted to conceal the existence of Owens' share in Hartford's royalties under the 1924 agreement (Exs. H-5448, 122).

[fol. 13455] *Section 22 of 1924 Agreement*

119a. Hartford frequently refused to extend the license rights of its licensees because of Owens veto power under Section 22 (Exs. 261 403 and 409).

a. From 1925 to 1930 inclusive, Hartford and Owens consulted together in connection with extending license rights to at least 13 concerns (Exs. 396-B, Tr. 1271, Exs. 436, 441, Tr. 1313, Exs. 439, 442, 399, Tr. 1206, 1214, Exs. H-5750, 401, 666-7, 1761, 669-70, 725-6, 728, 419, 404, 420, 645, Tr. 4099).

b. Owens flatly vetoed the proposed extension of rights to at least 4 concerns (1271, 1206, Exs. 401, 399, Tr. 4099).

c. Hartford refused to license North Baltimore Glass Co. in 1925 in order to protect Owens' subsidiary, American Bottle Co., from competition (Exs. 436, 439, 441, 442, Tr. 1313).

120. Although Section 22 was formally eliminated from the Hartford-Owens 1924 agreement in 1931 (Ex. 411), the spirit of Section 22 of the 1924 agreement was thereafter lived up to by Hartford and Owens by tacit understanding (Exs. 405, 409), and thereafter up to at least as late as July 15, 1937 (Ex. 505). Hartford and Owens continued to consult each other regarding the issuance of new licenses by Hartford.

a. In April, 1931 Hartford refused a request of one Crowell for a license in order to protect Owens' expansion on the West Coast (Ex. 466).

b. In November, 1932 Hartford and Owens jointly attempted to prevent Capstan from making beer bottles (sometimes hereinafter referred to as "beers") (Ex. 416, Tr. 1267).

c. In March 1933 Hartford granted Hazel-Atlas a right to make milk bottles, (sometimes hereinafter referred to as "milks") only after Owens' express approval (Ex. 163, Tr. 668, 3278).

d. In July 1933 F. G. Smith secured the approval of W. E. Levis to grant Kerr a fruit jar license (783, Ex. 206).

[fol. 13456] e. In December 1933 Hartford refused A. E. Floan's application for a beverage bottle license at Owens' request (Exs. 863-4, 997, Tr. 3647-8, 3652).

f. In October 1933 Hartford refused to extend Haywood's license after consultation with Owens (2690, Exs. 823, 954).

g. In December 1934 Harford agreed not to license anybody to make insulators without first consulting Owens (Exs. 1281, 1611, Sched. C., H-5750).

h. In January 1935 Hartford refused the license request of Western Glass Products and immediately advised Owens of that company's competitive threat (Exs. 484, 5, 7).

i. In February 1936 Hartford refused George E. Day a license to manufacture beer bottles, pharmaceutical ware and milks near Detroit in order to avoid incurring the enmity of W. E. Levis (1874-89, Exs. 498, 1490-1) and because of an agreement between Hartford and Owens that Hartford would not license anyone unless Owens approved and Owens did not approve of Day (Tr. 2936-7).

j. In July 1937 Hartford turned down applications for licenses in Texas upon learning of Owens' intended expansion in Texas (4456-7, 4592, Exs. 505, H-5750).

Effect of 1924 Agreement

121. As a result of the 1924 agreement which gave Owens a share in Hartford's royalties, a right to 40 free feeders and formers, and an inventions license, Owens was placed and maintained in a dominant position over its competitors.

122. The royalties received by Owens from Hartford from 1924 to 1935, inclusive, the value of its use of free feeders from 1924 to 1932, and its share in infringement damages received by Hartford from 1924 to 1935, were as follows:

[fol. 19457]

Year	Royalties Received from Hartford (Ex. 782, Sched. 4)	Number of Free Feeders (10,657)	Max. Value of Free Feeders Used (Ex. 55, §5)	Share in "Infringement" Damages (includes only damages pd. by H-A & B. B.)	Royalties pd. by Owens (including Owens-Illinois Pac. Coast Co.) to Hartford (Ex. 782, Sched. 5)
1924	$ 22,830.39	0	$.....	$.....	$.....
1925	125,379.09	18	198,000	.....	.....
1926	215,915.43	24	264,000	.....	.....
1927	263,703.06	22	242,000	.....	.....
1928	284,808.53	19	209,000	.....	.....
1929	391,850.91	16	176,000	.....	106,630.07
1930	385,601.38	16	176,000	.....	176,802.60
1931	391,235.80	16	176,000	.....	184,870.59
1932	389,208.10	8	44,000	500,000	271,174.53
1933	716,698.15	..	.....	75,000	526,544.19
1934	877,003.58	..	.....	.....	342,298.11
1935	750,859.52	..	.....	.....	585,348.60
Total	$4,815,093.96		1,485,000	575,000	2,393,168.15

123. From 1924 to 1935 Owens followed the policy of seeking to compel all glass manufacturers to pay a royalty in which Owens shared, on all production, while Owens paid no royalty (Exs. 255, § 71, 775).

124. Owens dominates the entire glass industry. From 1928 to 1939 inclusive, Owens shipped 39.08% of all containers shipped by companies east of the Rockies (Exs. 1390, 1391). From 1934 to 1938 Owens, through its subsidiary shipped 53.3% of all ware shipped by companies west of the Rockies (Ex. 1455). In 1938 Owens shipped more containers than the combined shipment of its 5 largest competitors (Ex. G. C. A. 5188).

125. Owens has been and is the recognized price leader in narrow neck glassware (10,438).

126. The profits of Owens for the years since 1928 have been excessive.

[fol. 13458] Profit Record of Owens (Ex. 1596)

Year	Net Sales	Net Income	Per cent
1928	22,789,688	4,529,919	19.9
1929	39,031,754	5,380,273	13.8
1930	33,481,777	2,984,545	8.8
1931	34,673,308	3,114,581	9.0
1932	29,293,838	2,247,802	7.7
1933	42,929,444	7,033,753	16.4
1934	50,097,702	7,478,477	14.9
1935	56,802,251	9,062,077	15.9
1936	78,481,842	12,128,295	15.5
1937	91,252,792	11,211,838	11.2
1938	74,915,653	6,685,169	8.9
1939	81,706,183	10,288,479	12.6

127. Owens shared the cost of Hartford's feeder litigation and patent office expenses from 1926 to 1935 (Exs. 114-6, 634, Tr. 5338-9, 10,046; Exs. 119-121).

[fol. 13459] *Joint Campaign of Litigation and Acquisition by Hartford and Owens*

128. At the time of the making of the 1924 agreement, there were a number of persons and companies independent of Hartford and Owens, engaged in the business of manufacturing and distributing glassmaking machinery. There were also numerous manufacturers of glass containers, independent of Hartford and Owens, who used independent glassmaking machinery. Upon execution of the 1924 agreement, Hartford and Owens inaugurated a campaign to drive

out of business these independent manufacturers of glassmaking machinery, and to compel or induce the users of such independent machinery to accept licenses from Hartford on the payment of royalties.

129. The 1924 Owens-Hartford arrangement contemplated the eventual acquisition of all rival manufacturers and licensors of glassmaking machinery, and in particular, Tucker, Reeves and Beatty and William J. Miller (Exs. 31, 1954, 1892, 43, 1958, H-5239, p. 9., 49, 1873, 619, Tr. 8087).

130. As part of their plan to control all patents relating to glassmaking machinery, and to eliminate all competing manufacturers of glassmaking machinery, Owens and Hartford together paid $3,575,225 for the following patents, applications, and assets:

Acquisition	Date	Paid By	Exhibit Nos. Par. 75 Complaint & Answer	Amount
Sears & Lobb Applications	Feb. 1925	Hartford and Owens		40,000
(Headley & Thompson Applications (For Option	Feb. 1925 to June 1929	Hartford and Owens	302	85,000*
H & T (For Option	Feb. 1925 to June 1929	Hartford (Return of Feeder Royalties)	302, 3, 9	350,000*
H & T (For Option	June 1929 to Sept. 1933	Hartford and Owens	305, 6	255,000*
H & T (For Acquisition	Sept. 1933	Hartford and Owens	337	200,000
[fol. 13460]				
Miller Patent & Applications	July 1935	Hartford and Owens	80	145,839
Tucker, Reeves & Beatty Patents Applications & Assets	Aug. 1925	Hartford and Owens	80	1,600,000
Rankin Patents	Oct. 1928	Hartford and Owens	111	63,500
O'Neill Patents and Assets	May 1933	Hartford and Owens	264, 5, 278, Owens br. 182–3.	585,886*
Lynch & Ed. Miller Patents	Aug. 1933	Hartford and Owens	328–9	250,000
Total				$3,575,225

* Approximate and rounded figures.

Acquisition of Tucker, Reeves & Beatty, and Miller.

131. Sometime prior to 1918 until August 14, 1925, Tucker, Reeves & Beatty competed with Hartford and Owens in the development, manufacture and licensing of feeders (Exs. 68, 1949, 70, 58, 623, 1972). At the time of the acquisition of Tucker, Reeves & Beatty in August 1925, 67 of its feeders were licensed to 5 manufacturers (Exs. 91, H-5749). In 1938, 61 of these machines were still in use (Ex. H-5749).

132. For many years prior to July 1925, William J. Miller was the most serious commercial competitor of Hartford, because of the magnitude of his business and because he sold many of his feeders outright. At the time of the Miller acquisition, July 30, 1925, there were 109 Miller feeders in use by 36 glass manufacturers. In 1941, there were 73 Miller feeders still in use by Hartford licensees. (Exs. 621, 66, 80, p. 1, H-5749).

133. From 1918 to 1924 Owens and Hartford made several separate and competitive attempts to acquire the patents and business of Tucker, Reeves & Beatty (Par. 79, Owens Ans., Exs. O-6026 H-5430, H-5448A, H-5449).

[fol. 13461] 134. After the Hartford-Owens 1924 agreement, Hartford and Owens joined together to force Tucker, Reeves & Beatty and Miller to sell their respective patents and businesses to Owens and Hartford (8086-7, Exs. 72, 619, 717, 1873, 1971, H-5856 A & B, H-6112).

135. Hartford and Owens planned to force Miller and Tucker and Reeves, Hartford's opponents in the interferences of the 48,326 and 50,890 series, to sell out to Hartford and Owens, and thereby clear the way for Hartford to obtain patents controlling the gob feeding art. The plan of Hartford and Owens to force Miller and Tucker and Reeves to sell out was made necessary by the position these outsiders were taking in the pending Patent Office interferences. In these interferences, they were relying upon the Hitchcock patents to effect the dissolution of the interferences (Ex. O-6076F), and although they were unaware of the facts of the Hitchcock demonstration their reliance upon Hitchcock involved an element of danger to the ultimate success of the plans of Hartford and Owens, in view of the previous decision of the Patent Office, in Interference

45,287, that the Hitchcock patents were pioneer patents in the gob feeding art (Ex. H-5400, paper 73). To force these outsiders to sell out, Hartford and Owens determined to harass them both in the Patent Office and in the courts.

136. Hartford and Owens harassed Miller and Tucker and Reeves in the Patent Office by prosecuting simultaneously in the interferences of the 48,326 series, involving Miller and Tucker and Reeves (Ex. 973), a number of applications standing in the names of different parties but owned or controlled by Hartford or Owens (Exs. 1896-1902) and by successfully resisting the attempt of Tucker and Reeves, in seven of the eleven interferences of the 48,-326 series, to force Hartford and Owens to elect to prosecute a single application in each interference (Exs. H-5259, paper 107, pp. 2-6, 1896-1902).

137. In furtherance of the plan of Hartford and Owens to harass Miller and Tucker and Reeves in the courts, Owens, in December 1924, brought suit on the Lott patents against [fol. 13462] Tucker, Reeves and Beatty, and against Federal, a user of Tucker and Reeves feeders, and in February 1925, brought suit on the same patents against Miller (Ex. 1595, table 5).

138. The primary purposes of Hartford and Owens in acquiring Tucker, Reeves and Beatty were to eliminate its competition with Hartford in the development and licensing of feeding machinery (Exs. 68, 58, 1892, 623, 1972, 74) and to enable Hartford and Owens to secure the issuance from the Patent Office of dominant patents controlling the gob feed art (Exs. 621-3, H-5851, 717).

138a. Hartford was also anxious to buy up Tucker, Reeves and Beatty because of the likelihood that a contest in the Patent Office might result in the refusal of the Patent Office to issue patents to either side. Counsel for Hartford advised Hartford that they were "loathe to urge" the defense of prior art against certain claims allowed Tucker, Reeves and Beatty in the Patent Office because such prior art would have to be based on a prior disclosure of gob feeding by Brookfield, Hitchcock, Steimer, Howard, and Lott, with the likelihood that no one would receive dominant patents on gob feeding (Ex. H-5008; Tr. 8092).

139. The acquisition of Tucker, Reeves and Beatty was in a form of a "screen"

a. To avoid the antitrust laws (Ex. 625).

b. To "club" Tucker, Reeves & Beatty licensees into accepting restricted licenses from Hartford (Ex. 80).

140. Hartford paid $1,600,000 for the acquisition of Tucker, Reeves and Beatty, of which Owens paid one-half (Ex. 80).

141. The principle steps in the acquisition by Hartford of Tucker. Reeves and Beatty were:

a. Tucker, Reeves & Beatty granted a non-exclusive license to Owens under all of their inventions, as a safeguard to Owens in case the 1924 Owens-Hartford agreement should be upset by the courts (Exs. 80, 90).

[fol. 13463] b. Tucker, Reeves & Beatty assigned all of their inventions to Hartford and conceded priority to Hartford on all interferences (Exs. 80, 91).

c. Tucker, Reeves & Beatty licenses were assigned to C. B. Belknap (Ex. 97).

d. C. B. Belknap granted an option to the Feeder Patents Company, all of the stock of which was owned by Owens and Hartford, to take over the Tucker, Reeves & Beatty licenses (Ex. 99).

e. Hartford and Owens agreed to divide all future royalties received from Tucker, Reeves & Beatty licenses (Ex. 103).

f. After the Tucker, Reeves & Beatty licensees had taken Hartford restricted licenses and the Tucker, Reeves & Beatty licenses were taken over by Feeder Patents Company, it assigned them to Hartford (Hartford and Owens Answers, Par. 80).

142. Owens received $822,981, from 1926 to 1932, inclusive, as its one-half share in the royalties paid by former Tucker, Reeves & Beatty licensees (Ex. 782, Sched. 4).

143. At the time of the acquisition of Tucker, Reeves & Beatty, Hartford believed that Tucker, Reeves & Beatty would have ample protection after patent interferences were

over to protect its pressure cup type of feeder, which would leave Tucker, Reeves & Beatty a strong competitor of Hartford (Ex. 74).

144. Shortly before the acquisition of Tucker, Reeves & Beatty, Owens believed that Tucker, Reeves & Beatty had been allowed claims in the Patent Office which covered "all modern gob feeding methods" (Ex. 622).

145. After the acquisition of Tucker, Reeves & Beatty by Hartford and Owens, each of its licensees was forced by Hartford to submit to numerous restrictions on the use of its Tucker, Reeves & Beatty feeders, among which were:

[fol. 13464] A. Federal Glass Company's (hereinafter sometimes referred to as "Federal") exclusive rights were restricted to a feeder when used with the "flaming cup" and not "otherwise" (Exs. 80, p. 8, 95).

B. Federal was restricted to the use of the Tucker & Reeves feeders in "the one Federal Plant located in Franklin County, Ohio" (Ex. 95), "to provide against any expansion of that plant by combination or consolidation" (Ex. 80, p. 8).

C. Capstan's license on pressed ware was limited to the machines it was then using (Ex. 808).

D. Winslow's license on milks was limited to the Tucker, Reeves and Beatty feeders it was then using (Ex. H-5750).

E. Hemingray's exclusive license on the insulators was limited to the Tucker, Reeves & Beatty feeders of the "flaming cup" type, and Hemingray was otherwise excluded from Corning's field (Exs. 344, H-5750). All other Tucker, Reeves & Beatty licensees were excluded from Corning's field (Exs. 95, 809, H-5750).

[fol. 13465] 146. The acquisitions of Miller and Tucker, Reeves & Beatty were considered by Owens and Hartford as parts of a single transaction (Exs. 1904, 1971, 623).

147. On July 30, 1925 Hartford acquired Miller's patent rights and applications for the sum of $245,839, $100,000 of which was repaid to Hartford by Victor J. Greene who took over the other assets of William J. Miller. Owens shared half the cost (Ex. 80).

148. At the time of the acquisition of Tucker, Reeves & Beatty and Miller, Hartford did not believe it owned patents controlling the operation of gob feeders (H. Br. 92, Ex. 79).

148a. The settlement agreement with Miller (Ex. 82) included a provision requiring arbitration between Miller and Hartford inventors. An affidavit by Miller stating the facts upon which Miller relied to establish his priority (9483, 9725) was prepared jointly by Brown and Miller's attorney, Lawrence (9681). This affidavit was couched in such terms as to lead to the conclusion that Miller's possible prior use in 1909 was nothing but an "abandoned experiment" and a secret use (Ex. H-5878).

148b. This affidavit was submitted to an arbitrator on July 29, 1925 as the sole evidence in the arbitration proceedings. On the very next day, the arbitrator decided adversely to Miller and in favor of the Hartford applications involved in the pending interferences (Ex. H-5880). On the day of the adverse decision by the arbitrator, Miller signed concessions of priority in the pending interferences (9484) and sold out to Hartford and Owens for $245,839. Shortly after the Miller acquisition, Lawrence, patent counsel for Miller, was put on a retainer by Hartford (9682-3).

148c. The purpose of the purely formal Miller arbitration was to obtain an affidavit from Miller which would bind him to a particular version of the facts of his early 1909 work on plunger feeders, and thereby prevent him from later testifying in a manner injurious to Hartford. By characterizing Miller's 1909 work with a plunger feeder as an abandoned experiment, the Miller affidavit set up an [fol. 13466] anticipatory defense against any attempt by Hartford's opponents to rely upon Miller's early inventive work to invalidate Hartford patents.

148d. Hartford never went through this or any other form of arbitration with other inventors whose applications it had acquired (9681). Nor did Hartford ever disclose the existence of the Miller affidavit, or the fact that this affidavit formed the sole basis of the arbitration award, at any time prior to the trial of this case (9681).

148e. While Miller testified as a witness for the defendants in subsequent infringement suits brought by Hartford, he never testified that he had signed an affidavit which had

formed the sole basis of the arbitrator's adverse decision against him (Exs. H-6162, H-6167).

Efforts to Obtain Patents in Patent Office After Elimination of Tucker, Reeves & Beatty and Miller from Patent Office Opposition.

149. In furtherance of a plan to obtain controlling patents for Hartford by ex parte prosecution, after buying off the opposition of Tucker, Reeves & Beatty and Miller, Owens failed to press interlocutory appeals in the pending interferences of the 48,326 series (Ex. 1907), and Hartford brought petitions (Ex 1907), requesting that the pending interferences be dissolved without prejudice and the applications returned to ex parte prosecution.

149a. Owens' failure to press interlocutory appeals in the 48,326 series of interferences was a part of the plant by which Hartford and Owens hoped to obtain patent control over gob feeding for Hartford (Exs. 616, 1527). Prior to the 1924 agreement, Owens had taken the position in the interferences of the 48,326 series in which the Lott application was involved that the "Big" Lott patent No. 1,382,994 owned by Owens, disclosed gob feeding (Ex. H-5259, Paper 50). If Owens' position on Lott was accepted by the Patent Office, the "Big" Lott patent would be established as a gob feeding patent prior to Peiler, whose earliest claimed date of invention was 1912 (Ex. H-5259, Paper 22) and would endanger Hartford's hopes of establishing patent control over gob feeding through its pending applications.

149b. To avoid this danger, Hartford and Owens agreed, after the 1924 contract, that Hartford would take the position in the Patent Office that the Lott patents did not disclose gob feeding, but merely disclosed stream feeding (Exs. H-5423, 616, 1527). Hartford took the position agreed upon, thereby obtaining a ruling from the Patent Office that the "Big" Lott patent 1,382,994 did not disclose gob feed-[fol. 13467] ing and did not anticipate the gob feeding issues of the interferences (Ex. H-5259, Paper 107, pp. 39-42). By this device, Hartford and Owens were able to remove the obstacle presented by the earlier position taken by Owens that the "Big" Lott patent disclosed gob feeding and to clear the way for the procurement by Hartford of broad gob feeding patents.

149c. Hartford and Owens also agreed to take the position against outsiders, such as Miller and Tucker, Reeves and Beatty, that the Lott patents were primarily stream feeding patents, but also covered mechanisms and processes useful in gob feeding (Exs. H-5423, 1527). One reason they took this position was to force their adversaries to take the position that their machines avoided the Lott patents because they were gob feeders, not stream feeders (Ex. 1527). By forcing their adversaries to take this position, Hartford and Owens hoped to commit their adversaries irrevocably to the position that their machines were gob feeders, and thereby prevent them from successfully denying infringement of Hartford's gob feeding patents when such patents should issue (Ex. 1527). This position on the Lott patents also permitted their use as "stop gap" patents against competitors of Hartford and Owens until patents could be issued on Hartford's applications.

150. After the dissolution of the interferences (Ex. H-5259, paper 150), ex parte prosecution of the involved applications was resumed, resulting in the subsequent issue of the following Hartford patents: Steimer 1,564,909; Peiler 1,573,742; Ferngren 1,574,739; Peiler 1,589,314 and Peiler 1,631,107 (Ex. 973—list 1).

151. Hartford and Owens had little hope of establishing control over gob feeding by means of these patents, but rather hoped to obtain such control through the issuance of a patent on the Peiler "stuffing" patent application.

152. Hartford's efforts to obtain a patent on the Peiler "stuffing" application had proved unsuccessful, and the application stood under rejection in May 1926 (Ex. 5520, pp. 216-219).

153. To obtain the issuance of a dominant patent on the Peiler "stuffing" application, Hartford and Owens had the Clarke Article published for the purpose of influencing the [fol. 13468] Patent Office to issue the patent (Exs. 136, 137).

154. This article was written by Hatch with the collaboration of Brown, Carter and Dorsey, and was signed by the union official Clarke (H. Br. pp. 294-296). It was published under Clarke's name on July 17, 1926 (Ex. H-5220, pp. 302-303), and on October 12th of the same year it was presented to the Patent Office (Ex. H-5220, pp. 261, 263) together with

affidavits of Peiler, Heintzelman and Howard (Ex. H-5220, pp. 266, 298, 295) in an effort to convince the Examiner that the suspended charge feeders, covered by the claims of the Peiler "stuffing" application, had revolutionized the art (Ex. H-5220, p. 265). In the Peiler affidavit, Hitchcock was presented as inoperative to perform the suspended charge method of feeding glass (Ex. H-5220, pp. 288-9).

155. On May 9, 1927, the Examiner finally rejected the Peiler "stuffing" application (Ex. H-5220, p. 319).

156. After the rejection, Hartford appealed to the Board of Appeals. An extensive brief (Ex. H-5220, p. 363) was filed on behalf of Peiler by Brown and Dorsey, and this brief was supported by the Clarke Article (Ex. H-5220, p. 592), by affidavits of Heintzelman (Ex. H-5220, p. 579), Howard (Ex. H-5220, p. 575) and Peiler (Ex. H-5220, pp. 541, 606), and by an affidavit of S. S. Cochrane, Vice-President and General Factories Manager of Owens (Ex. H-5220, p. 680). Hitchcock was presented as inoperative to perform the suspended charge method of feeding glass (Ex. H-5220, pp. 399-404, 501-5, 570-2), and the Clarke Article was presented as evidence that the Peiler feeder had been a tremendous success and had revolutionized the art (Ex. H-5220, p. 477). The Clarke Article and the Heintzelman affidavit were presented as the statements of reluctant witnesses (Ex. H-5220, p. 477). Cochrane represented that the Hartford feeders had revolutionized the glass feeding art and affirmed that the late M. J. Owens accorded to Peiler the principal credit for this advance (Ex. H-5220, p. 682). On May 10, 1923, M. J. Owens had expressed a contrary opinion to F. G. Smith (Ex. H-5422).

157. Although disregarding Hitchcock as a reference, the Board of Appeals rejected the Peiler "stuffiing" application on the ground of anticipation by a prior Howard patent 1,315,668 (Ex. H-5220, pp. 684-691). Hartford owned this [fol. 13469] Howard patent and also employed Howard (Ex. 61, p. 14). Hartford then had Howard file an affidavit virtually disclaiming the subject-matter of the Howard patent relied upon by the Board in rejecting the Peiler application (Ex. H-5220, p. 724). Peiler also filed an affidavit swearing back of the filing date of the application for the Howard patent (Ex. H-5220, p. 712). Following this action

by Hartford, the Board of Appeals withdrew the rejection and ordered the Peiler patent to issue (Ex. H-5220, p. 732).

158. This Howard affidavit is inconsistent with the Howard preliminary statement filed in Interference 48,327 (Ex. H-5260, paper 12), at a time when Hartford owned the Howard application and patents (Exs. 44, 59, 60, 61, 64, H-5835). The Peiler "stuffing" application was involved in Interference 48,327 (Ex. H-5220, p. 125). Hartford filed to disclose to the Board of Appeals either the inconsistency between Howard's disclosure and his previously filed preliminary statement, or that in 1923 when Howard filed his preliminary statement, Hartford was then the owner of the Howard applications and patents.

158a. The facts of the Hitchcock demonstration on January 25, 1924 and the facts regarding the authorship of the Clarke Article were not disclosed to the Patent Office in connection with the issuance of the stuffing patent or to the District Court for the Western District of Pennsylvania or the Circuit Court of Appeals for the Third District in the suit by Hartford-Empire against Hazel-Atlas on that patent.

159. In the Hazel-Atlas case, Hartford introduced in evidence the file wrapper of the Peiler "stuffing" patent, including the Clarke Article. The District Court did not mention the Article and held that if the Peiler "stuffing" patent was valid, it was not infringed, 39 F. 2d 111 (W. D. Pa., 1930). In the Circuit Court of Appeals, Hartford made reference to and relied upon the Clarke Article.

[fol. 13470] 160. The Circuit Court of Appeals, in an opinion by Judge Buffington (Judge Davis concurring and Judge Woolley dissenting), 59 F. 2d 399 (C. C. A. 3, 1932), reversed the District Court and held the Peiler "stuffing" patent valid and infringed. Judge Buffington's opinion, which refers to and quotes from the Clarke Article, held that the Hazel-Atlas feeder infringed the Peiler patent and gave that patent a broad and generic construction. Judge Buffington also referred to that portion of the Cochrane affidavit mentioning the great value M. J. Owens had attributed to Peiler's invention, 59 F. 2d 399, 409 (C. C. A. 3, 1932).

161. After the decision of the Circuit Court of Appeals, Hazel-Atlas started an investigation to determine the origin

of the Clarke Article (Ex. 133) in order to lay a basis for an application for a rehearing (4395). To prevent Hazel-Atlas from learning the facts relating to the authorship of the article, Hartford agreed to pay and paid Clarke $8000. in cash and concealed the purpose of this payment by entering into a purported employment agreement with Clarke (Ex. 932) and by disguising on its books the purpose of the payments to Clarke (Exs. 1159, 1266). Owens paid one-half of the $8000. paid to Clarke (4126, Exs. 1157-8-9).

Patents Claimed to be "Controlling" or "Dominating".

162. The patents which Hartford claims are "controlling" or "dominating" are the Peiler "phase change" patent No. 1,573,742, the Peiler "stuffing" patent No. 1,655,391, the Steimer patent No. 2,073,571, and the Peiler patent No. 2,073,572 (H-E br. 562-3, Tr. 9646-7).

163. The attempt to establish the Peiler "phase change" patent No. 1,573,742 as a "controlling" or "dominating" patent was unsuccessful. *Hartford-Empire Co.* v. *Nivison-Weiskopf Co.*, 58 F. 2d 701 (C. C. A. 6, 1932).

164. The Peiler "stuffing" patent No. 1,655,391 was obtained by the following acts in the Patent Office: (1) sup- [fol. 13471] pression of the facts of the 1924 Hitchcock demonstration. (2) Use of the Clarke Article without revealing the facts of its authorship. (3) Use of the Cochrane affidavit attributing to M. J. Owens an opinion, never held by him, about the high value of Peiler's inventions to gob feeding development. (4) Use before the Board of Appeals of a Howard disclaimer in which Howard abandoned an early invention date for subject matter disclosed in his patent 1,315,668, after he had claimed that early invention date under oath at a time when his applications were owned by Hartford, and without disclosure by Hartford of the inconsistent prior Howard claim. In the case of Hartford against Hazel-Atlas, in the Circuit Court of Appeals, Hartford did not disclose the authorship of The Clarke Article; it relied on the Cochrane affidavit attributing to M. J. Owens an opinion concerning the value of Peiler's invention to the gob feeding development; and it did not disclose the facts of the January 25, 1924 Hitchcock demonstration.

165. The applications for the Steimer patent 2,073,571 and the Peiler patent 2,073,572 were rejected by the Patent

Office and on June 4, 1931, Hartford brought suit in the Supreme Court of the District of Columbia to obtain patents on the rejected applications (Ex. H-5230, pp. 1-2). The facts of the 1924 Hitchcock demonstration were not revealed to the Supreme Court of the District of Columbia, but instead Hitchcock was presented by Hartford as inoperative to carry out the suspended charge method of glass feeding (Ex. H-5230, pp. 63-73). The Clarke Article was referred to (Ex. H-5230, p. 55), but the authorship of the Clarke Article was not revealed to the Court. The lower court dismissed the suit (Ex. H-5230, pp. 27-31) and an appeal was taken to the Court of Appeals of the District of Columbia (Ex. H-5230), which ordered the Patent Office to issue patents on the rejected Peiler and Steimer applications. *Hartford-Empire Co.* v. *Coe, Commissioner of Patents,* 57 F. 2d 741 (App. D. C., 1936).

[fol. 13472] *Litigation Against Lamb and Nivison-Weiskopf*

166. Contemporaneous with the plan of attack against Miller and Tucker, Reeves & Beatty, litigation was planned jointly by Hartford and Owens against the users of feeders not under license from Hartford (Exs. 626,1732). In 1925, there were 106 Miller feeders used by 34 manufacturers (7208, Ex. 66), 30 O'Neill feeders in the hands of several manufacturers (Ex. 621), about 50 Hazel-Atlas feeders made and used by that company (Ex. 643), and several feeders made and used by Kearns-Gorsuch, Nivison-Weiskopf Co. (Ex. 626), Obear-Nester, Root Glass Co. and Fairmount Glass Works (Ex. 621).

167. In 1926, Hartford filed suits for patent infringement against Nivison-Weiskopf Company and Lamb Glass Company (hereinafter sometimes referred to as "Lamb") in the Southern District of Ohio, and against Obear-Nester in the Eastern District of Missouri (Ex. 973). Each of these was then engaged in the manufacturing and sale of glassware. Owens shared equally with Hartford in the expense of this litigation (see par. 127 *supra*).

167a. In 1926, Owens transferred title to Hartford to its Soubier patent No. 1,574,709, Owens taking "a free license" back to cover any use of the Soubier invention by Owens or

its subsidiaries (Ex. 627). This transfer was made in order to permit Hartford to sue Lamb for infringement of the Soubier patent rather than to include Owens with Hartford as a party plaintiff (9404, Ex. 635). Hartford and Owens feared that if they were joined together as party plaintiffs in infringement suits, the result might be to expose their April 9, 1924 contract (Ex. 55), which in turn would result in the charge against them of conspiracy (Exs. 399, 562, 662). Because of these fears, counsel for Hartford in its infringement suit against Lamb Glass Company (Ex. 628), [fol. 13473] stated on June 2, 1928, that no one was assisting Hartford in the prosecution of that infringement suit, and this statement was contrary to the facts (Exs. 1981, p. 16, 626, 628).

168. Hartford and Owens selected Lamb and Nivison-Weiskopf for suit for a number of reasons, one of which was that they sold glassware at cut prices (Ex. 626).

169. During the pendency of the first suit against Lamb and on March 15, 1930, Hartford filed a second suit against that company charging infringement of the so-called Peiler "Stuffing" Patent No. 1,655,391 (Exs. 153, H-6100).

170. In the suits against Lamb and Nivison-Weiskopf Glass Company, the decision of the District Court was partially in favor of Hartford (58 F. 2d 701) and partially in favor of the defendants and all parties appealed to the Sixth Circuit Court of Appeals.

171. While appeals were pending, I. J. Collins and H. C. Mandeville of General, informed Hartford of a plan of General to acquire the assets of Nivison-Weiskopf (Ex. 314). Hartford approved of this plan and offered to make a very favorable settlement of its claims against Nivison-Weiskopf with General, because the acquisition of Nivison-Weiskopf by General would have the effect of removing a source of low priced competition in the industry (Ex. 314).

172. On September 30, 1931, General Glass purchased the glass assets of Nivison-Weiskopf for approximately $150,000 (Ex. 287).

173. In May 1932, the Circuit Court of Appeals decided the Nivison-Weiskopf and Lamb suits partially unfavorably to Hartford and partially in favor of Hartford (58

F. (2d) 701). In September 1932, General and Hartford negotiated a settlement (Ex. 288) under which Hartford [fol. 13474] paid General $20,000. and released all claims arising out of any patent infringement in exchange for a transfer by General to Hartford of the Nivison-Weiskopf feeders plus certain patents covering a Nivison-Weiskopf feeder which H. C. Mandeville had been told, and believed, did "not infringe in any way" upon the Hartford patents (Ex. 1142).

174. Rawleigh Glass Company was a manufacturer of glassware not under Hartford license and a subsidiary of a company engaged primarily in the manufacture and sale of proprietary medicines (O-I Ans.—Par. 81). Nivison-Weiskopf had sold one or more feeders to Rawleigh Glass Company (H-E Ans.—Par. 81) and by 1934 Rawleigh Glass Company had ceased to manufacture glassware (Exs. 290-1; see 2892). In 1936, Owens agreed to sell to the Rawleigh Company its bottle requirements for one year (Ex. 1688), purchased the Nivison-Weiskopf feeders and other glass machinery equipment from the Rawleigh Company, and agreed to assume claims for damages, and defend any suits against Rawleigh Glass Company brought by Hartford arising out of any claimed infringement by Rawleigh through its use of this equipment (H-E Ans. Par. 81; Ex. 1688). Owens acquired this equipment not because it desired to use it, but in order to suppress it and get it off the market.

Acquisition of Rankin Feeder Patents

175. On October 18, 1928, Hartford concluded arrangements to purchase the feeder patent rights of Rankin for $63,500 (Exs. 111-3). Owens shared approximately half the expense of this purchase (Exs. 111, 2004; see Par. 127, *supra*).

176. On February 16, 1929, Hartford granted Owens a license to make, have made, use and license others to make and use the inventions covered by each of the six patents and four applications acquired from Rankin (Ex. 2004). The license was in effect, free of royalty (*id.*—Sec. 4) (*cf.* 446).

177. The purchase of Rankin was made (a) in order to [fol. 13475] remove a potential competitor of Hartford in

the feeder field; (b) in order to remove possibility of a suit for infringement which was threatened against Hartford on the Rankin feeder patents (Ex. 628); (c) in order to gain certain Rankin patent applications to be used later in attempting to control suction feeders then being placed on the market by F. J. O'Neill and associated companies (Ex. 110); (d) in order to accomplish "stabilization in the industry" (Ex. 111); and (e) in order to carry out the Hartford-Owens policy of acquiring "every patent which, by any reasonable possibility, might be expected to have value (offensive or defensive) commensurate with its cost." (Ex. 109).

Owens' Acquisition of Atlantic Bottle Co.

178. In 1924, the Atlantic Bottle Company was a manufacturer of milk bottles using Miller feeders not under license from Hartford (Ex. 232; H-E Ans.—Par. 78). Officials of Hartford believed that Atlantic Bottle Company was "cutting prices and threatening the stability" of the "price structure in the milk bottle field" which was at that time "maintained largely by" Berney Bond and Thatcher (Ex. 232).

179. In 1926, after joint conferences between representatives of Hartford and Owens (Ex. 626—p. 4), Hartford served notice of infringement on Atlantic Bottle Co. (H-E and O-I Ans.—Par. 78).

180. In 1930, Owens purchased the assets of Atlantic Bottle Company (2826, O-I Ans.—Par. 78). Owens agreed with Hartford to execute license agreements covering Atlantic's Miller feeders, to pay royalties on its production in the plant of Atlantic, and to pay certain infringement damages, in exchange for which Hartford gave Owens and Atlantic Bottle Co. a release in full of all claims of infringement (4132; Exs. 406, 408, 1160, 1764).

Acquisition of Feeder Patents of O'Neill

181. From 1925 until 1933, and for some years prior to 1925, Frank J. O'Neill and the O'Neill Machine Company [fol. 13476] manufactured feeders and feeder fed forming machines. In 1924-5, Hartford and Owens attempted to get control of the O'Neill feeder (Exs. 618-9), in order to

eliminate O'Neill's competition in glassmaking machinery and in order to prevent the establishment of new competitors of Owens using O'Neill machinery in the manufacture of glassware (Ex. 648; see Ex. 627).

182. Prior to May, 1933, Hartford had acquired title to at least 12 O'Neill feeders which had theretofore been owned outright by two manufacturers of glassware (Exs. 151, 1617).

183. In May, 1933, Hartford acquired all of the O'Neill feeder patent rights (Ex. 265).

Litigation Against Obear-Nester Glass Co.

184. Sometime prior to 1925, Obear-Nester built from seven to nine plunger feeders (5636; Exs. 58—Par. 1 (J), 1736). In 1925, prior to the issuance of the Steimer or Peiler patents, Hartford urged Owens to sue Obear-Nester on the Lott patents (Ex. 1736) for the purpose, among others, of reducing competition in the production and sale of glassware by forcing Obear-Nester Glass Company to desist from price cutting (Ex. 1736). In April, 1926, Hartford filed suit against Obear-Nester in the Eastern District of Missouri, alleging Obear-Nester's plunger feeders infringed Steimer Patent 1,564,909, and the Peiler "Phase Change" patent (Ex. H-6100). The decision of the trial court was in favor of Hartford, and on appeal the decision was affirmed (39 F. 2d 769 (C. C. A. 8, 1930)). An accounting in this suit is still pending (Ex. 973—List (3)).

184a. Thereafter Obear-Nester ceased to use its plunger feeders and began to use the Stuckey feeder which was of the air-vacuum type (4352, and H-E and O-I Ans.—Par. 83). In February, 1929, Hartford filed a second suit alleging that the use of the Stuckey feeder infringed several Hartford patents (51 F. 2d 85 (E. D. Mo. 1931); Ex. H-6100); Hartford lost this suit in the District Court and the decision [fol. 13477] was affirmed on appeal (71 F. 2d 539 (C. C. A. 8, 1934)).

185. On April 8, 1938, Hartford filed a third suit against Obear-Nester in St. Louis, alleging that the Stuckey feeders infringed the Peiler "Phase-change" patent (Ex. H-6100). This suit is still pending (Ex. 973—list 3).

Conduct of Hartford and Owens in Connection with Interferences in Patent Office

186. At the date of the 1924 agreement, Hartford and Owens were involved in a large number of interferences in the Patent Office (7451, Exs. 973, list 4, O-5953). Section 8 of the 1924 agreement provided for the settlement of interferences between the two companies. The pertinent portion of this section provides:

All interferences in the Patent Office between applications of any two parties to this agreement shall be settled by arbitration (taking into consideration the practical advantages to all parties to this agreement) in case such parties cannot agree on the manner of settling them.

187. None of the interferences between Hartford and Owens was arbitrated but all were settled by negotiations between the parties (7486; 7487; Exs. 1873, 1879).

188. The purpose of Hartford and Owens in settling the interferences between them by negotiation, rather than by arbitration, was to obtain the strongest possible patents for the pool (Exs. 50, 55—Section 8, 1873, 1876, 1879). The controlling consideration in determining whether the interference counts should issue in Hartford or Owens patents was not the allocation of the counts to the first inventor of the subject matter covered by the counts, but the allocation of the counts so as to obtain patents of the greatest strength for the pool (Exs. 1877, 1909). Another controlling consideration was the allocation of the claims to the application of Hartford or Owens having the earliest date (Exs. 1836, 1875, 1877).

188a. Although Hartford and Owens settled the interferences between them by negotiation, they informed the Patent Office in a number of interferences that they proposed to settle such interferences by arbitration (Ex. 1909). [fol. 13478] Hartford and Owens filed stipulations for postponement to permit arbitration in Interferences Nos. 47,297; 48,266; 48,267; 48,948; 50,772; 50,773; 50,774; 50,782; 52,257; 52,258; 52,259 and 52,260 (Exs. H-5253, H-5258, H-6139 A and B, H-6141, H-6142, H-6143, H-5270, H-5279, H-5280, H-5281, 1909). Their object in notifying the Patent Office of their intention to arbitrate the interferences was to create the impression that the Hartford-Owens contro-

versies were not being settled without a consideration of the evidence in each case (Ex. 1873) and to enable them to terminate such interferences, or prolong them, at their option (Ex. 1873).

189. Hartford and Owens did not disclose to the Patent Office that they had entered into the 1924 agreement (Exs. 1895-6).

190. In settling the interferences between them by negotiation, rather than by arbitration, Hartford and Owens instituted a private tribunal (6615-7) for the purpose of obtaining the strongest possible patents for the pool (Exs. 50, 1836, 1873, 1875, 1879, 1909). This private tribunal was an instrument by which Hartford and Owens were able to settle the interferences by conferences between their patent attorneys (Exs. 1873; 1879), rather than by arbitration (7486-7), without spreading on the records of the Patent Office the motives and reasons for settling the interferences in the manner they did (Ex. 1873). Hartford's purpose in notifying the Patent Office that they were arbitrating the interferences, rather than settling them by negotiation (Exs. H-5253, H-5258, H-6139 A and B, H-6141, H-6143, H-5270, H-5279, H-5280, H-5281), was to conceal from the Patent Office both the existence and the purpose of this private tribunal.

191. Section 24 of the 1924 agreement between Hartford and Owens required each party to disclose its inventions semi-annually to the other and enabled them to cooperate for the purpose of planting "trap" applications against others in the Patent Office (Exs. 1675, 1748). Section 24 enabled Hartford and Owens to cooperate to transfer claims from applications owned by one company to applications owned by the other company for the purpose of placing the transferred claims in the applications having the earliest date (Exs. 1836, 1875, and 1877) and for the purpose of in- [fol. 13479] serting the transferred claims in the applications where they would have the greatest value (Ex. 1877). Section 24 enabled Hartford and Owens to make a comparison of each other's applications for the purpose of determining that the applications of one company should include the broad claims to a particular invention, while the application of the other company should include the narrow claims to that invention (Ex. 1878). Section 24 enabled

Owens to examine Hartford applications on suction feeding in an effort to find an application that would prove useful in "blocking off" O'Neill's suction machine (Ex. 1880).

192. To avoid jeopardizing the suits being brought on the Peiler and Steimer patents, the issuance of Tucker and Reeves patents was delayed by Hartford for approximately five years (Exs. 1758, 1759, 1909, 1910, 1911). To delay the access of the public to the file wrapper of a Tucker and Reeves patent after issuance of the patent, Hartford instructed a public stenographer to make copies of the file wrapper, thereby preventing others from obtaining access to it (Ex. 1739).

193. Hartford aided the Surface Combustion Corporation to obtain additional claims in the Cone applications, involved with Hartford in Interference No. 75,007 (Ex. 2092). When the Cone patents Nos. 2,162,377 and 2,162,378 were issued after the termination of the interference, Hartford obtained rights under them (Ex. H-6104) and listed them on the license plates attached to its lehrs (Ex. H-6105).

"Fencing in" and "Blocking off" Practices

194. In 1927, 1928 and 1929, Hartford filed 112 applications for the purpose of "fencing in" and "blocking off". During the same period, it filed only 88 applications for the purpose of affording patent protection to its own commercial machines (Ex. 388). While the 112 applications filed during 1927-1929 for the purpose of "fencing in" and "blocking off" covered all types of glass machinery, only 73 of these applications were directed towards feeders (Ex. 388). Fifty of these feeder applications were filed for the purpose of "fencing in" the suction gob feeders, among others, of Knox-O'Neill, Owens, Hillman, and Roirant, and thereby preventing those machines from reaching an improved stage of development (Ex. 388, pp. 24-25). Of these fifty applications, Hartford obtained 35 patents (Ex. [fol. 13480] H-5356). Hartford never manufactured and leased a suction gob feeder (6714). It had nothing on the market comparable to the Hillman machine (7273); it had nothing on the market comparable to the Roirant machine (7274-5); and it had nothing on the market comparable to the Knox-O'Neill machine (7276, 7284-5).

195. Six of the seventy-three feeder applications (Ex. 388, p. 25) were directed to the forced feed and down suction process developed by Hartford. These applications were filed to prevent outsiders from developing an alternative method of feeding glass which might offer competition in the future to Hartford's suspended charge method of glass feeding (Ex. 388, p. 25). These six applications were thus designed to "block off" possible development by others of an alternative method of glass feeding. Hartford never put into commercial use a glass feeder employing the forced feed and down suction process (6714). The remaining seventeen of the seventy-three feeder applications included six directed to improvements in "stream feed", four directed to other feeding methods, two directed to "electric feed", and five directed to "possible modification of gob feed" (Ex. 388, p. 25). All of these 17 applications, with the possible exception of the four applications directed to other feeding methods, were designed to "block off" the possible development by others of machines capable of utilizing alternative methods for accomplishing the same results as Hartford machines. On its applications on "forced feeding", Hartford obtained four patents (Ex. H-5933); on its applications on "downward suction", it obtained certain patents (Ex. H-5931); on its applications on improvements in "stream feed", it obtained four patents (Exs. 1888, 1888 A); and on its applications on "electric feed", it obtained two patents (H-5932). Hartford never put into commercial use feeders utilizing the "forced feeding", "downward suction", "improved stream feeding" or "electric feed" processes (6714).

[fol. 13481] *The 1932 Arrangements Between Hartford, Owens and Hazel-Atlas.*

196. In 1909 Owens granted Hazel-Atlas a license under all of its patents, and its future improvements thereon (exclusive but for one company) for the manufacture of articles of glassware listed in an annexed Hazel-Atlas catalogue (Ex. 909), most of which were wide mouth food containers (3054-5). Simultaneously, Owens acquired 5000 shares or approximately 16% of the stock of Hazel-Atlas, with a right to a one-third representation on its Board of Directors (3051-2, Ex. 909, par. 16). In 1926 Hazel-Atlas reacquired its stock held by Owens (3051-2).

197. In 1921 Hazel-Atlas granted Owens exclusive rights under Hazel-Atlas' five Brookfield patents, subject only to a shopright in Hazel (Ex. 1000). The purpose of this grant was to permit Owens promptly to notify thirty-one manufacturers of glassware of alleged infringement of these patents (Ex. 0-6030, p. 10).

198. For several years prior to July 1, 1932, Hazel-Atlas was in competition with various licensees of Hartford *including Owens* in the manufacture and sale of glassware (10,023-4, 3058, 5474, 3111-2, Exs. O-6013, p. 3, O-6014, 123, 776, 125 [Same as Finding No. 3 re Impounding Order except for addition of words in italics.]).

199. For several years prior to July 1, 1932, Hazel-Atlas used glass feeders and forming machines of its own design and manufacture in competition with feeders and forming machines designed by Hartford (3058, 8667-8, Exs. 79, 643). On several occasions prior to July 1, 1932 Hazel-Atlas offered to sell feeders and lehrs of its own design and manufacture to other manufacturers of glassware (3094, 3097, 3388, Exs. 913, 915).

200. Between 1925 and 1932, Hartford was pressed by the competition of Hazel-Atlas with respect to machinery used in the manufacture of glassware and sought unsuccessfully to induce Hazel-Atlas to take a license under the Hartford patents (Exs. 79, 125) [Finding No. 5 re Impounding Order].

201. In 1924, Hartford and Owens tried to persuade Hazel-Atlas to accept a license under Hartford's patents (Exs. 123, 620). Hartford and Owens offered to grant Hazel-Atlas a license under Hartford's patents at Hart- [fol. 13482] ford's standard royalty rates but to return to Hazel-Atlas a substantial proportion of these royalties "ostensibly in return for their patent rights", but actually in order to induce Hazel-Atlas to enter into an alliance with them, to withdraw its opposition to the Hartford and Owens patents and patent rights (Exs. 550, 644), and to assist in "building up, rather than the tearing down, of patent control" (Ex. 644; see Ex. 43). Other reasons, why Hartford and Owens desired Hazel-Atlas to take a license were "to stabilize the industry" (Ex. 140; see Ex. 165) and to discourage the use, by Hazel-Atlas and the others, of machinery not covered by Hartford or Owens patents (Ex. 1740, p.

3). Both Hartford (518, Ex. 1772) and Owens (Ex. 441, p. 9) also desired Hazel-Atlas to accept a license for the purpose of influencing non-licensees of Hartford to accept licenses.

Suits Against Hazel-Atlas

202. On May 26, 1926 Hartford sued Kearns-Gorsuch which was then a subsidiary of Hazel-Atlas (3478), in the Southern District of Ohio, for infringement of Hartford's patents through the use of feeders made by Kearns-Gorsuch (Ex. 973). In June 1928, Hartford sued Hazel-Atlas in the Western District of Pennsylvania for infringement of the Peiler "Stuffing" Patent (No. 1,655,391), through the use by Hazel-Atlas of its own feeders (516; 3472; Ex. 973). Owens shared in the expense of the prosecution of this suit by Hartford (Ex. 119; see also Exs. 114-117).

203. While Hartford's appeal from the decision of the District Court in the *Hazel-Atlas* case to the Third Circuit Court of Appeals was pending, "Hartford's licensing system hung in the balance" (Ex. 1772). "To Hartford's smaller licensees a breaking down of Hartford's licensing system meant freedom from royalties and ware restrictions, which they considered burdensome. To Hartford's larger licensees the amount of royalties paid meant less. Their chief worry was the unsettled industry which would inevitably result from a breaking down of Hartford's system of limited and restricted licenses. This system had offered very substantial protection in times past to certain restricted fields, and had prevented numerous manufacturers from competing on a par with Hartford's licensees" [fol. 13483] (*ibid.*).

204. On May 10, 1932, shortly after the decision of the Circuit Court of Appeals for the Third Circuit in the *Hazel-Atlas* case, the Executive Committee of Hazel-Atlas decided that, because the opinion of the Circuit Court of Appeals for the Third Circuit contained "so many discrepancies," an attempt would be made to petition for a rehearing; and if that attempt was unsuccessful, an attempt to secure a writ of certiorari from the United States Supreme Court (Ex. 929).

205. On May 12, 1932 the Circuit Court of Appeals for the Sixth Circuit in the suit by Hartford against Kearns-Gor-

such (a wholly owned subsidiary of Hazel-Atlas) rendered a decision (58 F. 2d 701) which was in conflict with certain portions of the previous decision of the Eighth Circuit Court of Appeals in the first suit brought by Hartford against Obear-Nester (39 F. 2d 769).

206. On May 17, 1932 the Executive Committee of Hazel-Atlas was informed by counsel for Hazel-Atlas that the opinion of the Sixth Circuit Court of Appeals in the *Kearns-Gorsuch* case was favorable to Hazel-Atlas and might be used to advantage in an attempt for a rehearing of the appeal in the Third Circuit Court of Appeals in the suit against Hazel-Atlas (Ex. 930).

207. Hartford feared greatly the possibility of the granting by the Supreme Court of a writ of certiorari to the Third Circuit Court of Appeals in the *Hazel-Atlas* case (Ex. 1772).

Negotiations Between Hartford, Owens and Hazel-Atlas.

208. On *May 6, 1932* the President of Hartford wrote to the President of Hazel-Atlas suggesting a discussion of plans for a relationship between Hazel-Atlas and Hartford (Ex. 130). Negotiations followed which culminated on July 21, 1932 in the execution of two agreements between Hazel-Atlas and Hartford (Exs. 142, 143) [Finding No. 7 re Impounding Order changed only with respect to underlined material], four agreements between Hartford and Owens (Exs. 144, 145, 146, 147) and two agreements between Owens and Hazel-Atlas (Exs. 148, 149), all under date of July 1, 1932.

209. During the ensuing negotiations with Hazel-Atlas, [fol. 13484] defendants Falck and Amory Houghton were consulted by Hartford (Exs. 140, 1740).

210. I. J. Collins, as a director of Hartford in May 1932, participated in a discussion of plans to get Hazel-Atlas to form a partnership with Hartford and Owens (Ex. 2005; see Exs. 1154, 1161). I. J. Collins, however, did not learn of the existence of the provision in the General License Agreement between Hartford and Hazel-Atlas (Ex. 142) whereby Hartford paid Hazel-Atlas one-third of its divisible income, until December 1938 (4196-8).

211. Hazel-Atlas was willing to take a license but insisted on participation in the royalties received by Hartford from

its competitors and other licensees of Hartford *on equal terms with those on which Owens participated under an earlier agreement with Hartford (593-4, 3136-7, 3372). Owens acceded to this demand* (Ex. 142, §6). [Finding of Fact No. 8 re Impounding Order, changed only by addition of material underlined] Hazel-Atlas also insisted upon an agreement by Hartford tending to discourage it from the manufacture of glassware (Ex. 142 §7; Ex. 226, Item 5). Hazel-Atlas desired to compel other manufacturers to take a license from Hartford (Exs. 164, 207, 589, 823, 951).

The July 1, 1932 Contracts

212. *On July 21, 1932, as of July 1, 1932, Hazel-Atlas, Owens and Hartford entered into certain contracts which resulted in a combination which the parties described as a "partnership" (Exs. 140, p. 5, 952).* Under the General License Agreement between Hartford and Hazel-Atlas dated July 1, 1932 (Ex. 142), Hazel-Atlas paid Hartford $1,000,000 and Hartford granted Hazel-Atlas a release from past infringements of Hartford patents, together with a non-exclusive, non-divisible license until January 3, 1945 under Hartford's feeder and former patents. Excluded from the license was the right to produce bulbs, tubing and cane, optical, signal and heat-resisting ware, certain tumblers, globes and chimneys, exclusive right to *most* of which had been granted to defendant Corning Glass Works. Other exclusions were marbles, flat glass, vacuum and milk bottles, and certain ware made on Tucker & Reeves types of machines. Section 3 required Hazel-Atlas to pay Hartford royalties on glassware manufactured under the licensed inventions and provided that if Hazel-Atlas did not use [fol. 13485] licensed inventions for at least four-fifths of its glassware, Hartford's payments to Hazel-Atlas under the contract should be reduced. Hazel-Atlas gave Hartford a release from claims for past infringement together with a non-exclusive and divisible license until January 3, 1945 under Hazel-Atlas feeder and former inventions, subject to specified exclusions, in consideration of which, and of Hazel-Atlas' agreement to furnish Hartford engineering and technical advice, Hartford agreed to pay Hazel-Atlas one-third of Hartford's net income, defined as the excess over $850,000 of its income from licensed inventions. [Finding No. 9 re Impounding Order, changed only by addition of underlined material]

213. Under the Hartford-Hazel-Atlas General License Agreement dated July 1, 1932 (*Ex. 142*), Hazel-Atlas was given a so-called "invention license," being the right to make and use Hartford inventions, which rights were not accorded to other Hartford licensees except Owens-Illinois Glass Company and, to a limited extent, Corning Glass Works (Tr. 1149-1150). [Finding No. 10 re Impounding Order, changed only by addition of underlined material.]

214. Under this same agreement, Hazel-Atlas was permitted to retain title to its machines and equipment, which right was not accorded to other licensees, with very few exceptions (Tr. 76-77, 709-710, 722). [Finding No. 11 re Impounding Order]

215. The payment by Hazel-Atlas of $1,000,000 as infringement damages was divided equally between Hartford and Owens (Ex. 141, p. 3). Under the General License Agreement between Hartford and Owens (Ex. 145) executed under the same date and as a part of the same arrangement, Hartford gave Owens a release from claims for past infringements and a non-exclusive, non-divisible license until January 3, 1945 under Hartford's feeder and former inventions, subject to the exclusion of the field allotted to defendant Corning, the exclusive right allotted to defendant Thatcher to make milk bottles on certain Hartford machines, together with other specified fields of ware such as marbles, flat glass, vacuum bottles and certain other ware made on Tucker & Reeves type of feeders. This con-[fol. 13486] tract contained provisions similar to those in the Hazel-Atlas General License Agreement; that if Owens failed to use licensed inventions or suction machines for at least four fifths of its glass, Hartford's payments to Owens should be reduced, and that in consideration of Owens giving Hartford a release for past infringements and a non-exclusive and divisible license until January 3, 1946 for feeders and formers as well as engineering and technical advice, Hartford was to pay Owens one-third of Hartford's net income, as defined in the Hazel-Atlas agreement.

216. Owens' license to Hartford under Owens' feeder patents was made non-exclusive "simply to guard against Government interference" (Ex. 1778).

217. In the Agreement for Cancellation and Reinstatement of Contracts between Owens and Hartford dated July

1, 1932 Owens agreed to the payment by Hartford to Hazel-Atlas of one-third of the one-half share of the income from licenses of Tucker, Reeves & Beatty to which Owens was entitled under a previous contract (Ex. 144).

218. Under the terms of the suction inventions license between Hartford and Owens (Ex. 147) Hartford granted Owens an option with respect to all of Hartford's suction inventions to take either an exclusive or a non-exclusive license or to purchase the inventions outright. Owens, however, was excluded from manufacturing ware falling in Corning's field, or vacuum bottles, with machines embodying these inventions.

219. Hartford granted Owens the license under Hartford's suction patents as a means of "keeping peace" with Owens by maintaining Owens in a dominant position with respect to the use of suction machines and thereby to continue the division of fields between Hartford and Owens by which Hartford was made dominant in the licensing of machinery employing the gob feed process and by which Owens was made dominant in the licensing of suction machinery (Exs. 629, 631, 141, p. 11, 1883). The effect of the agreement was to prevent Hartford from competing with Owens in the development and licensing of suction machines (Ex. 141, p. 11).

220. The division of fields of unpatented glassware, which had commenced in 1916 (Ex. 1), was strengthened and perpetuated by the 1932 agreements.

[fol. 13487] 221. Under the terms of the General License Agreement between Owens and Hazel-Atlas, dated July 1, 1932 and executed simultaneously (Ex. 148), previous agreements between Hazel-Atlas and Owens were cancelled, including the agreement of 1909 (Ex. 909). Owens granted Hazel-Atlas a royalty-free, non-exclusive and non-divisible license until January 3, 1945 to use its suction inventions for the manufacture of food containers, not including milk, beverage or prescription bottles, fruit jars or other specified ware. Hazel-Atlas granted Owens a royalty free, exclusive and divisible license to use Hazel-Atlas' suction inventions and granted Owens title to all of its machines embodying suction inventions.

222. There were three supplemental agreements simultaneously executed under the same date, the first between

Hazel-Atlas and Hartford (Ex. 143), the second between Hartford and Owens (Ex. 146), and the third between Owens and Hazel-Atlas (Ex. 149). The purpose of these agreements was "to take care of the contingency that by some outside influence or decree, governmental or otherwise", Owens or Hazel-Atlas should be unintentionally deprived of its rights to participate in Hartford's net income (597, Ex. 141). These agreements continued the rights to use Hartford's licensed inventions, but under different terms, in the event that Hazel-Atlas or Owens, respectively, was deprived of its right to receive one-third of Hartford's net income under the General License Agreement.

[fol. 13488] 223. As a "partnership arrangement" (Exs. 140, 952), designed in large measure to compel the remaining non-licensees to come in and take licenses, the agreements of July 1, 1932 gave Hazel-Atlas a share in the counsels of Hartford, Corning and Owens in their campaign to dominate the industry. It had the immediate effect of bringing many of Hazel-Atlas' competitors into the fold. It added the Hazel-Atlas backing to the joint campaign of Hartford and Owens against such outsiders.

223a. One of the motives of the parties in entering into the 1932 "partnership arrangement" was to place and maintain Hazel-Atlas and Owens in a dominant position in the industry.

224. As a result of said contracts, Hazel-Atlas has been confirmed in a dominant position over its competitors [Finding No. 18 re Impounding Order].

225. The parties realized that these contracts gave Hazel-Atlas and Owens dominant positions over their competitors and a "competitive advantage" (3361) and hence concealed the existence of the share in Hartford's royalties received by Hazel-Atlas and Owens (4196-8, 4278, 4418, 2589, 1697-8, Exs. 1742, 1311, 1228).

226. Under Sec. 6 of the General License Agreement between Hartford and Hazel-Atlas, payments have been made to Hazel-Atlas *from Hartford* as follows:

7/1/32—12/31/32	$ 180,404.05
1933	715,798.15
1934	877,003.58
1935	1,006,687.67

1936	1,303,301.12
1937	1,518,117.97
1938	1,245,739.61
1939	1,509,633.48
1940	1,677,345.15

[Finding No. 14 re Impounding Order, except for addition of material italicized].

227. Under Sec. 3 of the Agreement, payments have been [fol. 13489] made to Hartford from Hazel-Atlas as follows:

7/1/32—12/31/32	$ 217,899.95
1933	664,161.19
1934	827,853.88
1935	920,867.43
1936	1,139,316.08
1937	1,240,853.52
1938	1,004,293.05
1939	1,153,372.63
1940	1,186,990.79

[Finding No. 15 re Impounding Order]

228. The General License Agreement between Owens and Hazel-Atlas (Ex. 148) maintained Hazel-Atlas in a favored position in its use of suction machines.

229. Owens and Hazel-Atlas together dominate the entire glass container industry. From 1932 to 1938 inclusive, Owens, and Hazel-Atlas together accounted for an average of 56.24% of all containers shipped by companies located East of the Rockies (Exs. 1390-1). During the same period these two companies together accounted for an average of 78.2% of all containers shipped from points West of the Rockies (Exs. 1455-6). Owens has been and is the recognized price leader in narrow-neck ware, and Hazel-Atlas in wide-mouth ware (10438).

230. On July 1, 1932 there were no pending or threatened interferences between the patent applications of the inventors of Hartford with those of the inventors of Hazel-Atlas or its subsidiaries (Ex. 973).

231. In the litigation between Hartford and Hazel-Atlas there was no conflict of patent claims of such a nature as would, unless settled, block technical advancement in the

art, nor was Hazel-Atlas' alleged claim against Hartford and Owens under the Lott patent deemed by the parties to be a substantial part of the consideration for the agreements of July 1, 1932.

232. The General License Agreement between Hazel-Atlas and Hartford dated July 1, 1932 and the Supplemental Agreement between the same parties of even date as amended are still in effect. [Finding No. 17 re Impounding Order].

[fol. 13490] *Effects of the July 1, 1932 Agreements*

233. As a result of the contracts between Hazel-Atlas, Owens and Hartford dated July 1, 1932 (Gov't Exs. 142-149) Hazel-Atlas has joined with Owens and Hartford in combining their patents under joint control and placing limitations and restrictions upon the licensees of Hartford inventions for the purpose of controlling and limiting competition in the manufacture and sale of glassware.

234. As a result of said contracts Hartford was strengthened in a position of dominance and monopoly in the licensing and leasing of machinery used in the manufacture of glassware.

235. As a result of said contracts, Hazel-Atlas has been deprived of the means of (1) further combatting and possibly defeating the Hartford and Owens' monopolies in the Courts, and (2) using and developing competing devices which might defeat the Hartford and Owens monopolies through economic competition.

236. The agreements between Hartford, Hazel-Atlas and Owens of July 1, 1932 prevented Hazel-Atlas from applying for a rehearing and writ of certiorari by virtue of the fact that Hazel-Atlas agreed to accept a license from Hartford (Ex. 143, §3). The surrender of the right to make these applications was of "substantial value" (Ex. 143, §3).

237. By the terms of Section three of the Supplemental Agreement between Hartford and Hazel-Atlas it was provided that under certain circumstances Hazel-Atlas could secure a royalty-free license under the Peiler Patent No. 1,655,391 unless or until that patent should be held to be

valid and infringed in a judicial circuit other than the Third Circuit by a defendant other than Hazel-Atlas.

238. At the time of this agreement, Hartford had pending in the Western District of New York, a suit against F. E. Reed Glass Company (sometimes hereinafter referred to as "Reed") for infringement of Patent No. 1,655,391 (Ex. 973—List (3)).

[fol. 13491] 239. As of August 24, 1933, Hazel-Atlas agreed, that, at Hartford's request, it would enter into an amendment to its Supplemental Agreement with Hartford to extend the time from July 1, 1934 until August 29, 1937 after which Hazel-Atlas could obtain a free license under the "Stuffing" Patent, unless or until Hartford should obtain another adjudication of this patent outside of the Third Circuit (Ex. 1284-§1 and Ex. A). The amendment of Hazel-Atlas' Supplemental Contract with Hartford was duly made, on August 29, 1933, as agreed (Ex. 170).

240. Owens agreed in August, 1933 that (Ex. 1284) "• • • so long as Hazel-Atlas is compelled to account to Hartford for Hazel-Atlas' acts with respect to the Peiler patent 1,655,391, either because of a license contract obligation to Hartford or because of a court decree against Hazel-Atlas, Owens-Illinois will also account, either to Hartford or at Owens-Illinois' option to Hazel-Atlas, for all Owens-Illinois' acts with respect to this patent, either on the same royalty basis as Hazel-Atlas pays to Hartford or will account on the same basis as Hazel-Atlas may account to Hartford for its acts during the time that Hazel-Atlas is compelled to account."

241. In August 1933 the parties amended Section three of the Supplemental Agreement between Hartford and Hazel-Atlas (Ex. 143) so as not to compel Hartford to run the risk of having Peiler patent No. 1,655,391 declared invalid or of having its claims so limited by another federal court as to permit others in the glassware industry to operate suspended-charge feeders without infringing Hartford's patents, and thereby creating a condition of competition in the glassware industry (Exs. 162, 165, 168, 1848).

241a. On September 29, 1935 Hartford and Hazel-Atlas made a second amendment to the Supplemental Agreement, cancelling the first amendment thereto, and substituting

a provision to the effect that Hazel-Atlas should have a royalty-free license under Peiler "Stuffing" Patent, if it so desired, providing that, and so long as, its competitors should use, "in defiance" of the Peiler patent, feeders "substantially the same as those" held to infringe the Peiler patent in the Third Circuit, and to such an extent that [fol. 13492] Hazel-Atlas should be "deprived of substantially all the benefits" of its Hartford license (Ex. 573).

Increase in Certain Royalty Rates

242. On January 1, 1933, Hartford restored its royalty rate on round bottom family jelly tumblers to that rate which prevailed prior to 1927 when the royalty rate had been lowered in order "to meet the • • • Hazel-Atlas competition" (Exs. 125, 1767-8).

Consultation Between Hartford, Hazel-Atlas & Owens

243. Following the execution of the July 1st, 1932 agreements between Hartford, Owens, and Hazel-Atlas, McNash of Hazel-Atlas communicated on a number of occasions with F. G. Smith of Hartford with respect to the plans of Hartford, Owens and Hazel-Atlas to eliminate competition from feeders not under license from Hartford (Exs. 783, 222, 223, 925, 927, 922).

244. Hazel-Atlas actively cooperated with Hartford in attempts to induce other manufacturers of glassware to take a Hartford license and to pay royalties because Hazel-Atlas had a share in the royalties which Hartford collected (3173, 3262), and because the payment of royalties by manufacturers of glassware under a license from Hartford required the manufacturer-licensee to get what Hazel thought was "a reasonable price" (Ex. 823; See Exs. 924, 926, 589, 928, 206, 207).

245. Hazel-Atlas actively cooperated with Hartford in an attempt to restrict the field of ware of manufacturers who became licensees after July 1, 1932 because Hazel-Atlas did not like others to invade its field of ware in competition with it (3111-2; See Exs. 776, 155, 954, 956, 823).

President of Owens Becomes Director of Hazel-Atlas

246. In 1932, Illinois Glass Company acquired stock in Hazel-Atlas (Exs. 784-6, 817).

247. At all times from October 3, 1933 until August 5, 1935 William E. Levis was both president and director of Owens (O-I Ans. Par. 20; 2420) president of Illinois Glass Co. (2499) and a director (Exs. 955, 8) of Hazel-Atlas. Levis became a director of Hazel-Atlas in order to increase [fol. 13493] and safeguard the financial interests of Illinois in the glass industry (Ex. 783) and to benefit Owens in various ways, one of which was to increase the price level of glass containers by inducing Hazel-Atlas to raise the prices it charged for the sale of its ware (Exs. 820, 824).

248. In March, 1935, Levis advised McNash of his desire to resign from the Board of Directors of Hazel-Atlas as a result of unfavorable publicity which Owens and Levis had received in the United States Senate concerning their relationship with Illinois and Hazel-Atlas (Ex. 827). On August 5, 1935 Levis tendered his resignation (Ex. 958), and Quay of Hazel-Atlas was elected a director of the company to succeed him (2694-5), on October 11, 1935 (Ex. 958). Quay was elected "with the understanding that he would be representing" Illinois and its stockholders and that Levis would "receive through him the same type of information" he received while he was a director (Ex. 827).

Other Glassware Manufacturers Become Hartford Licensees 1932-1937.

249. Beginning shortly after the execution of the above agreements on July 21, 1932, many of those who did not have Hartford licenses agreed to come in and take a Hartford License (Tr. 629-760). [Finding No. 13 re Impounding Order.]

250. In 1931, Knox Glass Bottle Company including associated companies (hereinafter sometimes referred to as Knox), was the fifth largest manufacturer of glass containers in the United States (Exs. G. C. A. 5188, 1407, 1467). On August 25, 1932, as a result of the 1932 Agreement between Hartford and Hazel-Atlas, Knox accepted a feeder license from Hartford, transferred title to its feeders to Hartford, and undertook to pay Hartford infringement damages (Ex. 151). Knox was permitted to operate only 20 of its 25 feeders at any one time, except that if prohibition should be repealed it would be permitted to use the other five, but "only for the making of bottles for beers and ales" (Ex. 599). The 25 feeders could be operated only at the

then existing Knox plants (1706), (Ex. 151-§6). Knox did [fol. 13494] not receive a feeder license to manufacture all of the types of ware which it had been manufacturing notably, fruit jars (1709), and it was limited to the production of 75,000 gross of milk bottles (1700, Ex. 151—Sched. B). Knox also was denied an unrestricted license to make carbonated beverage bottles and tumblers (1701, 1704, Ex. 151—Sched. B). The right to make carbonated beverage bottles was not granted to Knox until January 16, 1940 (Exs. H-5750, p. 14, 1298-9).

251. At about the time when Knox accepted a feeder license the President of Hartford assured the President of Knox that "Hazel-Atlas had entered into • • • a regular license agreement such as was being presented" to Knox (1697).

252. On September 16, 1932 Owens purchased substantially all of the assets of the Root Glass Company, a manufacturer of glass containers using approximately 17 of its own make of feeders which were not under license from Hartford (Exs. 1922-3, H-5749). Owens assumed all of the claims of Hartford for damages against Root Glass Company (Ex. 1766) and Hartford released Root Glass Company and Owens for liability for such claims (Exs. 1766, 1765).

253. Prior to September 15, 1932 Hartford, Owens and Thatcher sought to cause Universal Glass Products Company and Lamb, manufacturers of milk bottles using Miller feeders, to accept Hartford feeder licenses in order to achieve "stabilization" of the milk bottle business (2504; Exs. 787, 783, 154).

254. On September 15, 1932 Universal Glass Products Company paid $40,000 in damages to Hartford and transferred title to Hartford to its feeders and leased them back under a license limited to the production of 100,000 gross annually of milk and similar bottles (Ex. 154).

254a. On November 10, 1932, Lamb agreed to withdraw its petition for certiorari (Ex. 981) in the suit brought against it by Hartford in 1926, and consented to the entry of a [fol. 13495] decree against it in the second suit brought by Hartford in 1930 (Ex. 153), in exchange for which Hartford released Lamb from all damages (Ex. 153). Lamb trans-

ferred title to one Stuckey and eight Miller feeders to Hartford for $22,000. (Ex. 152—Bill of Sale), and leased them back under a license limited to the manufacture of that number of milk bottles which could be made from one tank of 65 tons daily capacity, unless the total milk bottle sales of domestically manufactured ware amounted to at least 2,600,000 gross, in which event Lamb Glass Company could make not more than 10% of the total (Ex. 152—Sched. C). At no time from 1932 to 1939, inclusive, did the production of milk bottles exceed 2,600,000 gross (Ex. G. C. A. 5188 ex. E). Lamb desired but was refused a Hartford feeder license to make other kinds of ware in addition to milk bottles (Ex. 1354).

255. On December 1, 1932, Latchford Glass Co., for some time prior thereto a manufacturer of glassware, accepted a Hartford feeder license, agreed to pay Hartford $10,000 in damages, and transferred all of its feeder inventions and title to five Bethel feeders to Hartford (Ex. 158). Hartford leased the feeders back to Latchford Glass Co., under a license restricted to the manufacture of named types of glassware (Ex. 159).

256. On December 16, 1932, Maywood Glass Co., for some time prior thereto a manufacturer of glassware, agreed to pay Hartford $3,000. infringement damages, transferred all its feeder inventions to Hartford, and title to two Bethel feeders (Ex. 156). Hartford leased the feeders back to Maywood Glass Co., under a license restricted to the manufacture of specified types of glassware (Ex. 157).

257. On August 1, 1933, Northwestern Glass Co., for some time prior thereto a manufacturer of glassware, agreed to pay Hartford $15,000 infringement damages, and transferred all its feeder inventions to Hartford and title to one Meyer and two O'Neill feeders (Ex. 1630—Settlement Agreement and Bill of Sale). Hartford leased the feeders back to Northwestern Glass Co. under a license restricting it to the manufacture of specified types of glassware, and to be sold only in the States of Washington, Oregon, Montana, Idaho, and in the Territory of Alaska (*ibid*).

[fol. 13496] 258. Hazel-Atlas cooperated with Hartford and Owens in getting Maywood and Latchford to take Hartford licenses (4599 and 4601; Ex. 155).

259. On March 27, 1933, Diamond Glass Co., a manufacturer of glass containers, agreed to pay Hartford $15,000 in infringement damages and transferred title to Hartford to its two Miller feeder and five O'Neill feeders (Ex. 1617). Hartford leased six of these feeders back to Diamond Glass Co. under a license restricted to the manufacture of specified types of glassware (*ibid*).

260. On March 31, 1933, Standard Glass Co., for some time prior thereto a manufacturer of glassware, accepted a feeder license from Hartford restricted to the manufacture of specified types of glassware (Ex. H-5750, p. 8).

261. On July 7, 1933, the Sterling Glass Division of the Warfield Co., for some time prior thereto a manufacturer, among other things, of glassware, agreed to pay $10,000 in damages, and transferred title to Hartford to its one Meyer and three Miller feeders, and to all of its feeder inventions (Ex. 1635). In exchange, Hartford granted the Warfield Co. a feeder license limited to the specified types of glassware.

262. On April 30, 1934, Fairmont Glass Works, for some time prior thereto a manufacturer of glassware, agreed to transfer to Hartford title to its seven patents, and its one Shawkee and its fifteen Rau feeders (Ex. 1618). Hartford leased those feeders back to Fairmont under a license restricted to the manufacture of specified types of glassware (*ibid.*).

263. At all times during the year 1932 and for some years prior thereto, Brockway Machine Bottle Co., (hereinafter sometimes referred to as "Brockway") had been engaged in the manufacture and sale of glassware in the United States. In 1928, Brockway had entered into a contract with Hazel-Atlas and Kearns-Gorsuch, under the terms of which Hazel-Atlas and Kearns-Gorsuch undertook to secure as favorable a license agreement for Brockway from Hartford as Kearns-Gorsuch received from Hartford (Ex. 936).

264. In the Fall of 1932, negotiations commenced between representatives of Brockway and Hartford in which Hartford sought to induce Brockway to accept a license under [fol. 13497] its feeder patents. Repeatedly during these negotiations Hartford represented to Brockway, contrary to the fact, that Brockway was receiving a license agree-

ment from Hartford at least as favorable as that which Hartford had granted Hazel-Atlas (except as to fields of ware) (4472-6, 4464; Exs. 1272, 1940, H-5898). Acting in reliance upon these representations, Brockway executed a release of Hazel-Atlas and Kearns-Gorsuch from further obligations under the 1928 contract (4480-1), and signed an agreement with Hartford by the terms of which Brockway paid Hartford $10,000 in infringement damages (4478-9), and transferred to Hartford title to its ten Harding feeders (Ex. 161). Hartford leased the feeders back to Brockway under a license agreement restricted to the manufacture of specified types of glassware, not including fruit jars, for which Brockway had requested a license (4461-76; Ex. 161—Sched. C).

265. In 1933 and 1934, Universal Glass Products Co. (by then a Hartford feeder licensee) and Hartford believed that Florida Glass Manufacturing Co., a manufacturer of glass containers, was "demoralizing the milk bottle market all through the South", and that its prices were "perhaps 10% lower than standard manufacturers" (Exs. 1361, 208; see Ex. 1362). In January, 1935, Hartford filed two suits for patent infringement against Florida Glass Manufacturing Co., and in June a preliminary injunction was granted in the first suit (Ex. 973—List (3)). On August 2, 1935, Florida Glass Manufacturing Co. accepted a feeder license from Hartford restricted to the manufacture of specified types and amounts of glass containers, agreed to pay $1,000 infringement damages, consented to the entry of a decree against it in the second suit, and agreed not to oppose the entry of a permanent injunction in the first suit (Ex. H-6107).). Florida Glass Manufacturing Co., transferred title to its Miller feeders to Hartford (Ex. 1620).

266. In November, 1935, Hartford filed four suits for patent infringement against Tygart Valley Glass Co. (Ex. 973—List (3)). On February 18, 1936, Tygart Valley Glass Co. agreed to the dismissal of the four suits against it without prejudice, to pay $30,000 in damages, to transfer to Hartford title to five feeder patents, one feeder patent application, one forming machine patent, and thirteen Tygart Valley feeders (Ex. 1636—Settlement Agreement and Bill-of-Sale). Hartford leased these feeders back to Tygart Valley Glass Co. under a restricted license (*ibid.*).

Acquisition of Kucera Feeder

267. In August, 1931, Peter Kucera entered into contracts with others to develop and license his air displacement feeder (Ex. 985-987).

[fol. 13498] 268. In August 1932 Kucera agreed to sell his air displacement feeder to Hartford provided (1) that he could be released from his contracts with those who had agreed to develop and license it (3562), (2) that Hartford would not molest or threaten with patent litigation those companies that had purchased the Kucera feeder, (3) that Hartford would not interfere with Knox-O'Neill in the completion of its then existing contracts to sell the Kucera feeder (3564) and (4) that Hartford "would not shelve the Kucera displacement feeder" and that it "would market" it (3565). F. C. Smith, president of Hartford, said that Hartford "would place the Kucera feeder in the market commercially" (3566). Under the written agreement thereupon entered into, Hartford paid Kucera $45,000 in cash (Ex. 565—§1); Kucera transferred to Hartford his existing feeder inventions and agreed to transfer his future feeder inventions made prior to September 1, 1937 (id.—§§4-5); and Hartford agreed to pay Kucera $500 for each feeder licensed and leased within the succeeding twenty years (id. —§3 (b)), but guaranteed him at least $8000 per year for five years (id.—§3 (e)). Section 3 (d) of the contract provided that the licensing of Kucera feeders (Ex. 565) "shall rest in the sound commercial discretion of Hartford, provided, however, Hartford agrees that it will accept a bona fide order on Hartford's then existing standard terms and conditions from any one to whom Hartford would normally license."

269. Hartford has discouraged manufacturers of glassware from using the Kucera feeder (3598-3600, Exs. 991, 994-6), and has never built and licensed a new Kucera feeder (9041).

270. Hartford purchased the Kucera feeder patent rights in order to remove the Kucera air displacement feeder from the market and thereby eliminate competition between it and Kucera in the distribution of glass making machinery.

Litigation Against McLaughlin

271. On December 16, 1932 Hartford and McLaughlin Glass Co. (a manufacturer of glassware) entered into an agreement wherein McLaughlin Glass Co. acknowledged the [fol. 13499] validity of four Hartford feeder patents and admitted that its operation of the Bethel feeder infringed Hartford's patents, agreed to discontinue using it within one month and to deliver it to Hartford at a fair price.

272. In 1934 McLaughlin Glass Co. was manufacturing wine bottles on "an improvised feeder" (Ex. 756; see also 2367-70, Ex. 755). Owens believed that McLaughlin Glass Co. was selling wine bottles "at extremely low prices," and that this action was disturbing the "fairly well established market" of Owens (Ex. 756). Thereafter, Owens consulted with Hartford, and Hartford agreed to take steps to cause McLaughlin Glass Co. to cease operating feeders in the event that Hartford discovered that McLaughlin Glass Co. was operating feeders which Hartford believed infringed its patents (Ex. 757). On March 26, 1935, Hartford filed two suits for patent infringement against McLaughlin Glass Co., and a preliminary injunction was granted in the first suit in July 1935 (Ex. 973—List (3)).

Suit Against Shawkee

273. In 1932, Glenshaw Glass Co. and McKee Glass Co., both of which were Hartford feeder licensees in restricted fields of ware, organized Shawkee Feeder Co. in an attempt to develop a feeder which would not be held to infringe Hartford's patents. McKee Glass Co. began to manufacture heat-resistant ware on this feeder (Exs. 1355-7). McNash of Hazel-Atlas informed F. G. Smith of Hartford concerning some of the plans of those who were developing this feeder (Ex. 925).

274. In 1933, Hartford sued Shawkee Mfg. Co., Glenshaw Glass Co., McKee Glass Co. and others in the Western District of Pennsylvania charging that the Shawkee feeder infringed Peiler's "Stuffing" Patent. Later in the year the District Court granted a preliminary injunction against Shawkee (Exs. 973—List (3); 1855), and on appeal the decision was affirmed on the authority of the 1932 decision of the Third Circuit Court of Appeals in Hartford's suit

against Hazel-Atlas (68 F. 2d 726). The suit against Shawkee was brought, and a decree obtained, in order to get the remaining manufacturers of glassware to accept Hartford feeder licenses "and also to prevent any present licensees [fol. 13500] from changing over to air feeders" (Ex. 1856).

Acquisition of Capstan Feeder.

275. The Hartford licenses under which Capstan operated its feeders did not permit it to use them in the manufacture of beer bottles. In the latter part of 1932, Capstan developed a feeder of its own (hereinafter sometimes referred to as the "Capstan feeders") for the purpose of making beer bottles (2552). W. E. Levis and F. G. Smith tried to convince defendant G. F. Rieman that Capstan Glass Co. should not manufacture beer bottles (Ex. 416).

276. On April 13, 1933, Capstan and Hartford entered into an agreement amending Capstan's feeder license (Ex. 475). The amendment provided that Capstan would "not use for commercial production, nor sell, nor license" its Capstan feeders to others, and that Capstan would "co-operate with Hartford in every possible way, to the end that Hartford's licensing business [would] be of general benefit to the industry as a whole" (*ibid.*) Hartford agreed to grant Capstan a feeder license to manufacture beer bottles (*ibid.*)

277. On May 1, 1934, Capstan and Hartford entered into a further agreement amending the feeder license agreement, by the terms of which Capstan transferred title to its four Capstan feeders to Hartford, and Hartford permitted Capstan to use these feeders for the manufacture of specified types of glassware (Ex. 806).

Acquisition of Bethel Feeder.

278. In September 1934, Hartford acquired three feeder patents, one lehr patent, and a one-half interest in another feeder patent from Bethel Engineering Company (Exs. H-5912, H-5922) for $2500. A. R. Bethel and his company signed an agreement recognizing the validity of all of Hartford feeder patents, acknowledged that the Bethel feeder infringed four Hartford patents, and promised not to make or sell any more feeders which infringed those patents (Ex. H-5922).

Other Litigation.

279. On March 25, 1930, Hartford filed suit in the Western District of New York against Reed for infringement of [fol. 13501] Hartford's "Stuffing" Patent (Ex. 973—List 3). This suit is still pending (687). Reed has not yet accepted a Hartford license despite numerous Hartford attempts, after Hazel-Atlas took a license, through Amory Houghton and Falck of Corning (Exs. 539-40) and others to induce it to become a licensee (Exs. 528-40, 1345-54). Hartford aided Ball Brothers in that Company's unsuccessful attempt to purchase Reed (1399-1400; Exs. 539-40).

280. At all times in 1934 and for many years prior thereto, Jeanette Glass Co. had been engaged in the manufacture of glassware, but not glass containers, on feeders not under license from Hartford (1676). In 1934 Hartford learned that Jeanette Glass Co. was preparing to manufacture heat-resistant ware in accordance with the so-called Pyrex patents, covering the composition of such ware owned by Corning, upon the expiration of those patents in 1936 (Ex. 1752). In September 1936, after the expiration of the Pyrex patents, Hartford filed a suit in the Western District of Pennsylvania for infringement of Hartford's feeder patents against Jeanette Glass Co. (Ex. 973—List (3)). This suit is still pending (*ibid.*).

[fol. 13502] *Forming Machines*

281. It is impossible to make commercial use of a feeder except in conjunction with a forming machine. Realizing this fact, Hartford and Owens desired to bolster their control of feeders by obtaining control of the manufacture and distribution of forming machines (Exs. 320, 295, 1749, 1779).

282. Hartford always desired to obtain patents relating to forming machines on the theory that if it should lose patent domination of other important links in the manufacturing process, such as in connection with feeders, it might still retain practical control of the whole chain through the control of forming machines (Ex. 388).

Early History

283. In 1919, Hartford commenced the development and distribution of forming machines (1503), and from 1923

to 1926 it developed and commenced to license its so-called individual section (hereinafter sometimes called "IS") machine (1637, Ex. 415), of which there were 176 under license and lease in 1941 (Ex. H-5749).

284. For some time prior to April 9, 1924, Hartford had been competing in the forming machine field with Owens, Lynch, O'Neill, W. J. Miller and Ed. Miller (3697, Exs. 1749, 591, 2013).

285. Upon and after the entrance by Hartford and Owens into the contract of April 9, 1924 (Ex. 55), competition between them with respect to the development and use of forming machines ceased.

Sears & Lobb

286. In December, 1923, Hartford sought an interference between the Sears application, which it then controlled (Exs. H-5294, H-5882), and those of Headley and Thompson, owned by Whitall-Tatum Company, a manufacturer of glassware. The Headley and Thompson applications had an earlier filing date than that of Sears and Lobb (Exs. H-5509-10), and contained broad claims relating to forming [fol. 13503] machines (Exs. 299-300). In March, 1924, the Sears application was placed into an interference previously declared between the Headley and Thompson application and a Graham patent of Owens (Exs. 301, 975-List (4), Intf. Nos. 48,582, 50,700; Exs. H-5509-10).

287. After the 1924 Hartford-Owens agreement, attorneys for Owens urged that the Sears and Lobb application be promptly purchased outright by Hartford on account of the bearing of that application on the Graham type of machine of Owens, and this was done for $40,000. (Ex. H-5882).

Acquisition of Headley & Thompson Patent Applications.

288. In May, 1924, Hartford and Owens entered into negotiations with representatives of Whitall-Tatum Company, in which Hartford and Owens sought to acquire exclusive rights under the Headley and Thompson applications (a) in order to protect Hartford's own forming machines (Exs. 296, 1528), (b) to control all other types of forming machines (Exs. H-5513, 1974, 295, 296, 591, 900), and (c) to control the manufacture and distribution of unpatented

glassware (Exs. 295-6). Hartford and Owens intended, if they secured control over the Headley and Thompson applications, to endeavor to strengthen and broaden the scope of the claims of such applications (ibid.).

289. Owens was "more concerned in obtaining the benefits of any monopoly that might result from Headley and Thompson than in securing the right to continue the economical use" of their own glass-making machinery (Ex. 591).

290. Counsel for Owens advised Owens against acquiring an exclusive license under the Headley and Thompson patents because such a license "savors too much of combination and control" (Ex. 1835).

291. In January, 1925, representatives of Hartford, Owens and Whitall-Tatum agreed upon the terms of a contract between Hartford and Whitall-Tatum, by the terms of which (1) Owens and Hartford would withdraw opposition to Whitall-Tatum's applications, "so that the [fol. 13504] latter may be issued with as broad claims as possible"; (2) Hartford was to take an option permitting it to acquire an exclusive or a non-exclusive license under the Headley and Thompson applications; (3) Whitall-Tatum agreed to sign a Hartford feeder license agreeing to take at least ten Hartford feeders within a year, and not more than ten thereafter; (4) Hartford agreed to pay Whitall-Tatum, during the option period, an amount equal to the feeder royalties which Whitall-Tatum was to pay to Hartford, but not to exceed $90,000. per year; (5) Hartford agreed to pay Whitall-Tatum $20,000. a year, in addition to the royalty rebate (Ex. 301).

292. A contract incorporating this agreement was signed on February 9, 1925 (Ex. 302). On the same day, Hartford and Owens entered into an Agreement by which Owens (Ex. 303), undertook (1) to pay to Hartford one-half of the $20,000. annual sum which Hartford was required to pay Whitall-Tatum under the agreement, (2) to share one-half of Hartford's litigation expenses arising out of the Headley & Thompson application if Hartford elected to take an exclusive license from Whitall-Tatum, and (3) received certain rights to royalty-free forming machines covered by the applications.

293. On or after February 9, 1925, Hartford and Owens withdrew their opposition to the Headley & Thompson

applications in the Patent Office and aided Whitall-Tatum in securing broad claims in the applications (Exs. 1978-80).

294. On June 1, 1929, Hartford entered into a new agreement with Whitall-Tatum which cancelled that of February 9, 1925 (Ex. 302) and gave Hartford, for $60,000 a year, the option of five years, or until patents on the Headley and Thompson applications were issued (whichever period was longer) to take an exclusive or non-exclusive license under the Headley & Thompson patents (Ex. 305).

295. Owens gave its consent to Hartford to enter into the agreement of June 1, 1929, with Whitall-Tatum and agreed (a) to pay one-half of the payments required to continue the [fol. 13505] option in force or maintain the exclusive or non-exclusive license, (b) to reduce the amount of its share in Hartford's divisible income by one-half of the royalties Hartford would pay to Whitall-Tatum for the non-exclusive license; and (c) to share litigation expense paid by Hartford, arising out of its exclusive license. Hartford agreed not to default to Whitall-Tatum or make any election under the agreement without the consent of Owens or without an arbitration award (Ex. 306-Sec. 4). Hartford also granted Owens the right to use not more than forty forming machines free of royalty to Hartford (Ex. 306-Sec. 5).

296. In 1932, Hartford reconsidered the question whether the option should be continued (Exs. 1779, H-5888), and concluded to do so (1) in order "to secure a possible club in case the feeder [patent] situation fell"; (2) in order to have "an effective club," in case of a "combination of all the forming machine interests," "in making the deal probable, and" to have "a guise for making the combination lawful"; (3) in order to protect the already heavy investment of Hartford and Owens in the Headley and Thompson applications; (4) because of the possibility of added royalty income from licenses; (5) because Owens desired the continuance of the option chiefly because it desired a forming machine pool; and (6) in order to have the right to a license in case Headley and Thompson applications covered inventions embodied in Hartford and Owens forming machines (Ex. 1779).

297. On September 9, 1933, Hartford purchased the Headley and Thompson applications outright for $200,000 and

Owens paid to Hartford one-half of the sum which Hartford paid to Whitall-Tatum (Ex. 337). On September 26, 1933 Hartford granted Owens an exclusive license to use suction machines embodying inventions covered by the Headley and Thompson patents (*ibid.*).

[fol. 13506] *Acquisition of O'Neill*

298. From 1925 until 1933, Owens and Hartford desired to purchase the business of Frank J. O'Neill and the O'Neill Machine Company, manufacturers of both feeders and feeder fed forming machines (Ex. 648), as part of a plan to consolidate the principal manufacturers of forming machines in the United States, including O'Neill and Lynch (Exs. 644, 649, 1749). Hartford and Owens desired to accomplish the forming machine combination while recognizing the likelihood that the combination might be unlawful under the Antitrust laws (Exs. 76, 77, 650, 1749, cf. 73). The primary reason for the desire of Hartford and Owens to acquire or, in some manner, control O'Neill, was to remove competition of others with Hartford and Owens in forming machines, in order to achieve a monopoly of glass forming machinery, and in order to control the manufacture and sale of unpatented glassware (Exs. 650, 1749; *cf.* 320).

299. In or around 1927, F. J. O'Neill and The O'Neill Machine Company developed a new type of suction machine, somewhat similar to the Owens machine, but employing a stationary rather than a revolving pot from which the glass was sucked into the molds (1681, 1687). The O'Neill suction machine was smaller, lighter, and less expensive to operate than the Owens machine (Ex. 263—attached letter from C. B. Belknap to W. E. Levis, dated March 28, 1933). The O'Neill suction machine was a "well designed structure, capable of reliable, steady operation" and "comparatively simple" (Ex. 255).

300. In 1928, in order to obtain detailed information regarding the O'Neill suction machine, a Hartford representative, acting under an assumed name, and an Owens representative, visited the factory of Knox, where the machine was being perfected, without permission of the owners of the factory or of the machine, and attempted to cut a hole in the roof of the factory in order to observe the machine in

[fol. 13507] operation (Ex. 557). Subsequently, representatives of Hartford and Owens were able to watch the machine in operation by entering the factory, but without permission of the owners thereof (*ibid.*, Ex. 662).

301. By 1929 the O'Neill suction machine was furnishing substantial competition with the Hartford feeders and forming machines (Exs. 253, 703, 1859).

301a. Hartford and Owens feared that if the use of the O'Neill machine could not be stopped, it would abolish payment of royalties to Hartford (Ex. 1859), and would result in increasing competition in the glassware market (*ibid.*).

302. In 1929 Hartford, with the approval of Owens, entered into negotiations with representatives of Knox who had an interest in the O'Neill machine, for the purpose of attempting to purchase, or otherwise control, the O'Neill suction machine (Exs. 1859, 253, 1860), but these negotiations were unsuccessful (Ex. 1860).

303. On November 15, 1929 Owens filed suit in the Western Division of the Northern District of Ohio against Frank J. O'Neill and The O'Neill Company for infringement of Soubier Patent No. 1,705,341 (Ex. 1595 (ex 5)).

304. In March 1930, Hartford filed suit for patent infringement through the use of the O'Neill suction machines against Carr-Lowrey Glass Company, a user of both O'Neill suction machines and Hartford feeders (10817), (Ex. 973-List 3; Ex. 1613). In July 1931 the suit was settled and Carr-Lowrey was granted a license under the patent in suit.

305. In the Fall of 1931 Harry Collin, a director of Owens and a Toledo stock broker, acquired an option on the O'Neill patents and property (Ex. 262) but this option was not exercised. On March 6, 1933, Owens acquired an option to purchase the entire business of Frank J. O'Neill, and The O'Neill Company. This option was exercised and the closing date of transaction was set for May 6, 1933 (Ex. 263, Sec. 16). By the terms of this option, in exchange for $600,000 Owens could acquire all of the O'Neill business and patents in the United States, including patents and patent applications relating to feeders, feeder-fed forming machines, O'Neill suction machines, and the O'Neill station-[fol. 13508] ary pot (264-Ex. A) and O'Neill, his sons, and The O'Neill Company agreed not to engage, directly or

indirectly, in the glassmaking machinery business in the United States for a period of five years (Ex. 264-Sec. 15). Owens was to dismiss the suit pending against O'Neill (Ex. 264-Sec. 20).

306. Owens believed that the stationary pot patents were worth $250,000 to Owens because O'Neill was the first to commercially develop a stationary pot-suction machine combination (Ex. 263-Attached letter of March 28, 1933).

307. Although the O'Neill suction machine was not in use in the Owens plants, Owens believed that its then existing program of machine development was working toward light suction feed machines and that therefore, the O'Neill suction machine patents, other than the stationary pot patents, were worth an additional $100,000 to it (*ibid.*).

308. As of May 1, 1933, before the closing date of May 6, 1933, with O'Neill, Hazel-Atlas and Owens entered into a contract relating to the O'Neill suction patents (Ex. 1285). Owens agreed with Hazel-Atlas to acquire all of the patents and inventions of O'Neill relating to suction machines (*ibid.*), and Hazel-Atlas agreed to pay Owens $50,000, and if Hazel-Atlas should use any of the O'Neill suction patents and inventions in machinery for manufacturing glassware for commercial use, promised to pay Owens $50,000 additional (*ibid.*).

309. Hartford and Owens desired that Hartford should contribute to Owens in the purchase of the O'Neill assets but desired that this should be done in a manner which would avoid the appearance of a direct contribution by Hartford to Owens (Ex. 278). For this reason, as of May 5, 1933, Hartford purchased the feeder and feeder-fed forming machine patents and patent applications of Frank J. O'Neill and The O'Neill Company, and an exclusive license from Frank J. O'Neill and The O'Neill Company under their suction patents and patent applications insofar as the inventions embodied therein could be used in feeders and feeder-fed forming machines, all for a price of somewhat more than $85,000 (Ex. 265).

[fol. 13509] 310. As of May 6, 1933, for $500,000 Owens purchased the patents and patent applications of O'Neill relating to the O'Neill suction machine and stationary pot, but subject to the outstanding exclusive license to Hartford described above (Ex. 264—Sec. 1, Par. (c)).

311. On September 1, 1936, Hartford and the Knox companies entered into an agreement by which Hartford purchased ten O'Neill machines owned by the Knox companies, in exchange for a credit to Knox of $85,000. (Ex. 266—§ 2). Knox agreed to license and lease the machines from Hartford if it desired to use them (Ex. 266—§ 3).

312. Following the acquisition of the inventions embodied in the O'Neill suction machine and stationary pot for its own revolving pot. This change effected a substantial saving in Owens' factory costs (9800). After testing the O'Neill suction machines, however, Owens ceased to employ them in any of its operations on the ground that the machine was not a commercial success for the type of production in large quantities in which the Owens Company engaged (9791); and furthermore, with the exception of its license to the Hazel-Atlas Glass Company (Ex. 572), never licensed patents covering inventions embodied in the O'Neill suction machines (10,277-8).

Arrangements with Lynch

313. From 1917 to 1933 Lynch had been engaged in the manufacture of glass forming machines primarily designed to make narrow neck bottles. By 1927, 70% of the narrow neck forming machines in use were Lynch machines (L. C. br. on Mo. to Diam. p. 16).

314. One-third of all glass containers are wide mouth glass containers (3941). From 9 to 15% of all wide mouth containers made by the gob feed process is made on machines designed primarily to manufacture narrow neck ware (*ibid.*). Approximately 70% of all glass containers automatically made are manufactured by the gob feed process (Exs. 1824, 1367). Since 1932, the actual sales of glass containers in the United States by manufacturers thereof have been in excess of $100,000,000 (see Exs. 946, 1596, G. C. A. 5188).

[fol. 13510] 315. In 1927, forming machine patent applications of Bridges, vice-president of Lynch, were placed in interference with those of Headley & Thompson (3706).

316. Thereafter, and between 1927 and 1933, Hartford attempted to enter into negotiations with Lynch in order to arrive at an agreement "which would more fully protect" Hartford and Lynch "against outside competition"

(Ex. 1002). Hartford insisted that it "would have to issue a license or control the sale" of Lynch machines as one of the terms of any agreement that might be made between them (3724).

317. In the Spring of 1933, the United States Patent Office decided the interference between Bridges and Headley and Thompson in favor of Headley and Thompson (Ex. 312).

318. On March 22, 1933 Lynch entered into a contract with an independent manufacturer of glass making machinery and another concern, the purpose of which was the promotion of new enterprises to engage in the manufacture of glass containers (Ex. 1023).

319. Hartford and Owens desired to discourage the promotion of new glass container enterprises (Exs. 320, 416, 863), and representatives of Hartford and Owens made arrangements for meetings with representatives of Lynch in April and May 1933 (3786, Exs. 1024-5).

320. For many years prior to August 2, 1933 Edward Miller, in business under the name of Miller Machine and Mold Works, had been the manufacturer and distributor of the "best" forming machines for the manufacture of wide mouth ware; (3697, *cf.* Ex. 1026), and had manufactured and sold exclusively to Root Glass Company a forming machine designed primarily for the manufacture of narrow neck ware (8739, Ex. H-6048).

321. In 1933 and for some years prior thereto Lynch had considered engaging in the manufacture of a forming machine designed primarily for the production of wide mouth glassware (3767-8).

322. For some years prior to August 21, 1933 Lynch and Edward Miller were in competition in the manufacture of [fol. 13511] forming machines (3941; Exs. 1766, H-6048; *cf.* Ex. 1922).

323. In April 1933 Harry Collin acquired an option to purchase the assets of Ed Miller (3410, 3411; Ex. 963). This option was extended on July 1, 1933 to August 26, 1933 (Ex. 963).

324. In May 1933 William E. Levis, President of Owens, learned that Lynch was interested in acquiring the Miller

business and thereafter, and on May 12, 1933, suggested to Lynch that the acquisition by Lynch of Miller be part of a larger plan to work out something between Hartford, Lynch and Owens (Ex. H-6048; Tr. 3786, 3805, 3828).

325. Thereafter on or about June 12, 1933 W. E. Levis and Owens endeavored to get Hartford to purchase the Miller business under the Collins option (Exs. 310-11).

326. Levis and Owens desired to have the Miller assets subject to the control of Hartford and Owens, and a constituent part of the forming machine pool, the organization of which Hartford and Owens were then planning (Exs. 165, 168, 278, 1750, 1779, HA-5085).

327. By July 8, 1933, Lynch, Owens and Hartford were in agreement that "it was desirable to corner the forming machine business" (Ex. H-6048). Lynch offered to cooperate with Hartford and Owens in effecting this "corner," in exchange for an assurance of a reasonable future volume of business (*ibid.*).

328. On August 21, 1933, Lynch, with the financial assistance of Hartford, Owens, William E. Levis and Harry E. Collin (3830-8; Exs. 169, 326, 1033), acquired substantially all of the assets of Edward Miller's glass machinery business for $450,000, and Miller agreed not to manufacture glass making machinery for a period of ten years thereafter (Ex. 327).

328a. In September 1933 Lynch raised the prices of the Miller type machines substantially above those which Edward Miller had been charging (Ex. 1046).

328b. On August 23, 1933 Lynch entered into an agreement with Owens wherein Lynch granted Owens an ex-
[fol. 13512] clusive license under all of Lynch's suction inventions, including those which might be developed or controlled by Lynch until January 1, 1951, in exchange for $125,000 and the privilege of manufacturing parts for those O'Neill machines which remained on the market. (Ex. 328).

328c. Lynch had never engaged in the business of manufacturing machines embodying the suction process (3686). The purposes of the contract of August 23, 1933 between Owens and Lynch were to prevent Lynch from manufac-

turing suction machines in the future and to furnish Lynch with cash for use in the acquisition of the Miller business (*cf.* Exs. 326, 169).

329. On August 23, 1933 Lynch entered into a feeder license agreement by the terms of which Lynch granted Hartford an exclusive license under all its feeder inventions, including those which might be developed or controlled by Lynch until January 1, 1951 in exchange for $125,000 (Ex. 329).

329a. Lynch had theretofore not been in the business of manufacturing feeders (3686), although the license included a feeder invention acquired by Lynch from Miller (Ex. 963). The purpose of the feeder license agreement from Lynch to Hartford was to prevent Lynch from engaging in the manufacture of feeders and to furnish Lynch with part of the cash necessary to purchase the Miller business.

329b. Levis and Collin underwrote a sale of additional Lynch stock to the amount of $200,000 and the proceeds of this sale were used to pay a portion of the cost of acquiring the Miller business (3830-8, Ex. 1033).

330. On August 23, 1933, Hartford and Lynch entered into a contract entitled "Forming Machine Agreement" (Ex. 330). In Section 2 thereof Lynch granted Hartford a non-exclusive license to make, have made, sell, lease and license others to use forming machines designed by Hartford but embodying Lynch forming machine inventions. In Section 3 Hartford granted (Ex. 330) Lynch a non-exclusive license to make and deliver forming machines, embodying Hartford licensed forming machine inventions, to any person or concern that obtained from Hartford a license under [fol. 13513] Hartford forming machine inventions to use such forming machines; provided, however, that Lynch should have the right to make and deliver to any Hartford feeder lisensee any such forming machine, if such feeder licensee had agreed in writing to accept a license of the scope Hartford was required under Section 5 thereof to offer to its licensees. In Section 5 Hartford agreed to offer and upon the written acceptance of the licensee, to extend each of its feeder licenses, theretofore or thereafter made, to include, without additional production royalty, a non-transferable right to use with feeders if and when oper-

ated under such feeder licenses, forming machines acquired from Lynch or its predecessors and embodying licensed forming machine inventions. Section 8 provided in part that Hartford would pay Lynch $3,000 for each patented forming machine that Hartford delivered in excess of those having an aggregate production capacity greater than 40% of the production capacity of all forming machines delivered by both Hartford and Lynch. During the existence of Section 8 Hartford never distributed more than 40% of the aggregate number of forming machines distributed by both Hartford and Lynch (4000). Section 8 constituted a substantial restraint upon Hartford's ability to compete with Lynch in the distribution of forming machines.

331. On September 20, 1933 Hartford instructed Lynch to refuse to furnish forming machines to customers who were not feeder licensees of Hartford (Ex. 335). Subsequently, Hartford offered to furnish forming machine licenses to customers of Lynch who were not feeder licensees, provided (1) the customer was a "reputable glassware manufacturer" (Ex. H-5110), and provided (2) that the customer in addition to paying Lynch the purchase price of the machine which included a substantial profit (See 3990; Ex. 1590), would pay Hartford a royalty on ware produced on the machine at a rate equivalent to the royalty on Hartford's feeders (Ex. 535).

332. The Forming Machine Agreement placed Obear-Nester Glass Company, and Reed Glass Company, manufacturers of glass containers not having feeder licenses from Hartford, at a competitive disadvantage because they were unable to get Lynch forming machines except in ac- [fol. 13514] cordance with the above conditions (2816, 5996, Exs. 1111, 1115, 532-536, 1086, 1109, 1110).

333. From August 23, 1933 until September 18, 1940, Lynch had sold no narrow neck forming machines to any manufacturer of glassware who was not at the time of sale a feeder licensee of Hartford, and from August 23, 1933 until November 12, 1938 sold no wide-mouth forming machines to any manufacturer of glassware who was not at the time of sale a feeder licensee of Hartford (5996).

334. One of the purposes and effects of the Forming Machine Agreement was to cause manufacturers of glassware

not then possessing feeder licenses from Hartford, to accept such feeder licenses and thereby to bolster Hartford's monopoly of feeders (Exs. 330, 338, 1077).

335. Glass manufacturers who were Hartford feeder licensees and who had signed "Former Licenses" with Hartford covering the use of Lynch machines which said manufacturers had purchased, were prevented, as a result of the practical operation of the Forming Machine Agreement and the "Former Licenses" issued thereunder, from using any but Hartford feeders with the Lynch formers, since a changeover to another type of feeder would have subjected said manufacturers to prohibitive royalties on the use of the Lynch forming machines.

336. The Forming Machine Agreement also had the purpose and effect of giving Hartford complete control over the distribution and use of all narrow neck forming machines and of substantially all efficient fully automatic wide mouth forming machines in the United States.

337. The Forming Machine Agreement also had the purpose and effect of preventing new capital and additional concerns from entering the glassware industry (Ex. 320; see Ex. 745).

338. Since 1933, Lynch and Hartford have been the only distributors of narrow neck forming machines in the United States.

339. Competition of others with Hartford and Lynch in the distribution of wide mouth forming machines since 1933 has been negligible (1866-7, 2272, 2815, 4329, 10704-6, 10717-20, 10728; Exs. 740, 1217, 2012-3).

[fol. 13515] 340. From August 23, 1933, until November 12, 1938, in the case of Miller-type wide mouth forming machines and until September, 1940, in the case of Lynch narrow neck machines, every purchaser-licensee thereof, excepting Hazel-Atlas and Owens and Ball Brothers (Exs. 142, 957, H-5024, 145, 569), before purchasing forming machines from Lynch, entered into a "former license" with Hartford, which contained similar or identical restrictions upon the ware that could be made on the licensed machine, after it had been purchased, that were contained in the feeder licenses and leases made by Hartford with that purchaser-licensee (8887, Ex. H-5751, Sched. B, 1115, Sec. 4 and Sched. B).

341. During the period from March 23, 1933, to September of 1940, Hartford licensed at least 147 forming machines which had been sold by Lynch to its customers and most of said customers executed "former licenses" (Exs. H-5749, H-5751; Tr. 8887).

342. In 1935, Counsel for Hartford advised Hartford to cancel the entire Forming Machine Agreement because of doubts as to the legality of the contract under the antitrust laws "provided the resulting situation is not too serious from a business viewpoint" (Ex. 1782). In 1936, Hartford suggested to Lynch that Section 8 of the Forming Machine Agreement be eliminated on the ground that it was considered illegal by the United States but Lynch refused to do so (4000-1). Immediately after the agreement was entered into between Hartford and Lynch, and at all times thereafter, Hartford desired to eliminate Section 8 from that agreement (Ex. 709).

342a. On November 12, 1938, after the commencement of the investigation of the affairs of Hartford and Lynch by the Temporary National Economic Committee, Section 8 of the Forming Machine Agreement between Hartford and Lynch was eliminated by amendment (Ex. 340). As a part of that amendment, Hartford granted Lynch a non-exclusive license to make and deliver those types of forming machines which are designed primarily to produce wide-mouth ware and ware which is made purely by a pressing operation, to all of Lynch's customers regardless of whether they had obtained licenses to use the Hartford inventions allegedly embodied therein (*ibid.*). Lynch was required to pay Hartford a royalty of $100. on each machine so sold [fol. 13516] (*ibid.*). The amendment left unchanged the requirement that purchasers of narrow neck forming machines from Lynch secure "Former Licenses" from Hartford.

343. In the standard lehr stacker license and lease entered into between Hartford and the lessees of its lehr stacker, it was provided prior to March 1939 in part as follows (Ex. 1804): "* * * in case the leased machinery shall at any time be used by the Licensee for the handling of glassware into, upon, or in connection with any lehr or other glass annealing machinery not then controlled under license from the Licensor, then in such case the Licensor reserves the

right in its option to revoke and cancel this License and Lease."

344. A type of press which Lynch had built was known as the P. G. B. machine (3901). In 1936 Owens desired to purchase certain of these presses modified specially for the manufacture of glass building blocks (3904). As a result of joint efforts between Lynch and Owens engineers, the modified Miller presses were built by Lynch and sold to Owens (3905). At the request of Owens, Lynch promised that it would not furnish the improved press known as the PGB press to anyone (3904) other than to Owens and its licensees (Ex. 751). In 1937 Lynch sold some PGB machines through its European representative and Lynch received approval of Owens before making the sale (3906-7, Ex. 751).

345. Washington Mold Machine and Foundry Company has manufactured eleven presses and press and blow glass forming machines since 1933 (10,719-21). It has never built a machine used commercially to form a narrow neck bottle (*ibid.*). In October 1933 an employee of Lynch visited Washington Mold Machine and Foundry Company, ostensibly for the purpose of seeking employment but actually to discover whether or not it was manufacturing forming machines (Exs. 1781 and 1781A). The report which the Lynch employee made to his employers of the results of his visit was forwarded to Hartford (Ex. 1781).

345a. In November 1937 Hartford sued Washington Mold Machine and Foundry Company in the Western District of [fol. 13517] Pennsylvania for infringement of the Headley & Thompson patents (Ex. 973—List (3)). Washington Mold had made only one allegedly infringing machine. A consent decree was entered in December, 1937 and an injunction issued (*ibid.*).

Lehrs

346. It has been the policy and ambition of Hartford, since its inception, to control through "patent domination" the "annealing" link in "the entire" process of fabricating glass (Ex. 388).

347. Inventions covering lehrs were not treated as "licensed Inventions" in the 1924 Hartford-Owens agreement;

but in 1931, Hartford licensed its lehr inventions to Owens on terms which are more favorable to Owens than those granted by Hartford to its other lehr licensees (Exs. 0-6045-46, 580, 1685, 739, 740, H-5795).

348. In 1928, Hartford's principal competitor in designing and distributing lehrs was Amsler-Morton Company. Amsler-Morton sold its lehrs outright (2274). Hartford licensed and leased its lehrs under restrictive licensees, limiting the types of ware which could be annealed thereon (Exs. 580—Sched. A, 739, 740, 1821, H-5749). Between 1915 and 1937 Amsler-Morton built over 450 lehrs (2273) while Hartford during the same period never had in excess of 325 under license and lease (Ex. H-5749). In 1928 Amsler-Morton sold its lehrs for $9,500 (2279), while Hartford charged an initial license fee ranging from $5,189 to $9,500 depending on the type of lehr, plus a royalty of $100 per operating month (Ex. H-5800).

349. Early in 1928 Amsler-Morton began to put its lehr on the market "in large numbers" (2275). At that time, Hartford notified it of infringement of its patents (2275), with a resultant corresponding claim by Amsler-Morton of infringement of its patents by Hartford (*ibid.*).

350. In May, 1920 W. A. Morton, President and Geer, Treasurer of Amsler-Morton (2271), went to Hartford (2278). Representatives of Hartford suggested to Morton and Geer that Amsler-Morton increase the price of its lehrs from $9,500 to $13,500 accept a license under Hartford's lehr patents and pay Hartford $4,000 on each lehr sold by Amsler-Morton (2279). Amsler-Morton refused to accept this proposal (2280).

[fol. 13518] 351. In 1934 Hartford was experiencing brisk competition in the distribution of lehrs, and considered reducing its licensing fees and royalty (Ex. 575).

352. Hartford thereafter reduced its lehr royalty from $5 per day or not to exceed $100 per month, to $2.50 per day (Ex. H-5800).

353. In January or Februray, 1934 (2281) Harry Collin visited the offices of the Amsler-Morton Company and offered it $200,000 for its patents and an agreement to get out of the glassmaking machinery business (2281). Amsler-

Morton Co., declined the offer. In February or March 1934 Collin made a second visit to the offices of the Amsler-Morton Company (2281) and he was accompanied on his visit by one Frazier of Simplex Engineering Company—a lehr manufacturer—and by B. F. Hazelton, Jr., a vice-president and director of Owens (2283)—(O-I Ans. Par. 20), and a stockholder in Simplex (2283). Collin and Hazelton who then represented Owens and Hartford suggested to the representatives of Amsler-Morton that it be combined with Simplex Engineering Company. If this proposal was accepted Hazelton agreed to secure to the new company all of the furnace business of Owens and other companies and to secure for the new company the right to build all of the lehrs to be licensed and leased by Hartford (2286-7). Amsler-Morton declined the offer (*ibid.*). At the close of the interview Hazelton told the representatives of Amsler-Morton that if they did not agree to combine, they would be sued until they were driven out of the glass machinery business (ibid.).

353a. In accordance with an understanding with Owens and about three or four months after the visit of Collin and Hazelton to the offices of Amsler-Morton Company, and in June 1934 (2287, Ex. 973—List (3)), Hartford filed two suits against Swindell Bros. Inc., in the District Court of Maryland for infringement of Hartford's lehr patents through its use of Amsler-Morton lehrs. In addition to its use of these lehrs, Swindell also leased Hartford lehrs and Hartford feeders (Exs. 740, H-5750). Amsler-Morton was under contract with Swindell obligating it to intervene and defend this suit, which it did (2288, 2314).

[fol. 13519] 354. Owens assisted Hartford in obtaining evidence to be used in the trial of the *Swindell* suit (Ex. 764-9).

355. Following the decision of the District Court in favor of Swindell in 1937 (18 F. Supp. 191), Hartford appealed to the Fourth Circuit Court of Appeals which reversed the District Court and held that the Amsler-Morton lehrs infringed Hartford's patents (96 F. 2d 227 (1938)).

356. Since 1938 Amsler-Morton has sold no new lehrs for use in the United States (2295). In 1939, Hartford leased only one lehr of its own make in addition to those it had

under license and lease in 1938; but it licensed 143 lehrs of other types in that year, including Amsler-Morton lehrs (Ex. H-5749). By the end of 1941, this number was increased to 198 while Hartford had leased and licensed only 36 additional lehrs of its own make (*ibid*).

357. Thatcher constructed and used in its plants a type of lehr called the Nagle lehr (Exs. 1754-5, H-5321). Hartford contended that the Nagle lehrs infringed Hartford's patents (Ex. H-5321). By the terms of a settlement made on December 6, 1937, Thatcher transferred its title to all Nagle lehrs to Hartford (*ibid*) and Hartford granted Thatcher a $20,000 credit to be set off against its royalty payments (Exs. H-5321, 1754-5).

Fruit Jars and Ball Brothers' Arrangements

358. In or before 1912 (Ball Bros. Ans. par. 50), Ball Brothers acquired an exclusive (Exs. 1496, O-5213) license to use the Owens suction machine for the manufacture of fruit jars (Ex. O-5210). This license was renewed on November 2, 1924 (Ex. 195), and finally expired on June 6, 1933 (B. B. Ans., par 50). Since October 1940, Ball Brothers has not used Owens suction machines in the manufacture of fruit jars (10299) because of the relative inefficiency of the suction process in the manufacturing of fruit jars by Ball Brothers (10373, 10385, 10366-7).

359. In 1924, Ball requested Owens to grant it an exclusive license for the manufacture of fruit jars on Owens feeders. Owens declined to do so, but entered into an agreement with Hartford for the benefit of Ball Brothers by which Hartford contracted to give Ball Brothers a "non-exclusive license to use any glass feeding or forming machines developed" by Hartford for the manufacture of fruit jars at Hartford's lowest royalty rates (Ex. 549; see also Ex. 1496).

[fol. 13520] 360. In 1925, Ball Brothers for $5,231,700 purchased Schram Glass Company's fruit jar business including three factories and several glassware patents (4241-2; B. B. Ans. par. 51). The factories that Ball Brothers acquired from Schram Glass Company are not now being used by Ball Brothers to manufacture glassware and have not been used for some time (4330-1).

361. In 1929, Ball Brothers for $872,400 purchased Pine Glass Company's fruit jar business and one lehr stacker patent (4242-3; B. B. Ans., par. 51).

362. In 1926, during negotiations between Hartford and Ball Brothers looking toward the taking of a license by Ball Bros., (693, Exs. 171-2), Ball Bros. insisted that Hartford grant it as exclusive a license for fruit jars as it was in the power of Hartford to grant (4248-9). Ball Bros. did not accept a Hartford feeder license at this time.

363. Early in 1932, Hartford notified Ball Bros. that the continued use of the Ball-McCauley feeders infringed Hartford's patents (Ex. 1181). Ball Bros. denied Hartford's Claim (Ex. 1181), continued to deny this claim in January, 1933 (Ex. 1270, p. 6), and did not then believe that its feeders infringed Hartford's patents (*ibid*).

364. In the summer of 1932, F. G. Smith, McNash and Levis, were all attempting to persuade Ball Brothers to accept a license. At that time it was the largest manufacturer of glass containers not then under Hartford license, and was the fourth largest manufacturer of glass containers in the United States (Ex. G. C. A.—5188).

365. In August, 1932, W. E. Levis believed that Ball Bros. would take a license from Hartford in order to limit the production of fruit jars by others (Ex. 783). McNash of Hazel-Atlas did everything he could to help Ball Bros. decide to take a license (Ex. 176).

366. From 1926 until March 25, 1933 (Ex. 199), Hartford continually declined to license others to use its equipment for fruit jars in order to be able to give Ball Bros. as exclusive a license as was possible for fruit jars (Ex. 181). These refusals on the part of Hartford resulted in a loss of royalties to Hartford (*ibid.*).

367. Ball Bros. insisted, as a condition of any license it might take, that Hartford agree not to grant any further licenses for fruit jars. At that time Hartford had outstand-[fol. 13521] ing the following fruit jar rights; (1) an unlimited license to General Glass Corp. (Ex. H-5750); (2) a license limited to the production of 120,000 gross annually, to Gayner Glass Works which expired on July 1, 1934 (Ex. 199—Sched. C); (3) a license limited to special less popular types known as the "Lightning" and the "Eureka" fruit

jars, to Salem (Ex. 199—Sched. C); (4) an unlimited license to Hazel-Atlas (Exs. 199—Sched. C; 142); and (5) an unlimited license to Owens (Exs. 199—Sched. C, 145).

368. Brockway and Knox, although not licensed by Hartford to make fruit jars, continued to do so on unlicensed equipment (Exs. 151, 193, 200).

369. In the Summer of 1932, Levis and McNash told Collins that General "ought to give up the license" it had to manufacture fruit jars on Hartford feeders (2739). Collins agreed to do so (2740). At that time General was a potential competitor of Ball Brothers, Hazel-Atlas and Owens in the manufacture and sale of fruit jars. Thereafter, Ball Brothers refused to take a feeder license from Hartford unless General surrendered its fruit jar license to Hartford (Ex. 178; see Ex. 1162). On March 21, 1933, General surrendered its license to use Hartford feeders for the manufacture of fruit jars in exchange for $100,000 (Ex. 198).

370. Hartford assured Ball Brothers that it would not in the future license Knox to manufacture fruit jars on any type of equipment which Knox might thereafter operate under license from Hartford (Ex. 181; see also Tr. 1712, Ex. 182).

371. About March 1, 1933, Hartford, Ball Brothers and Knox entered into an informal agreement (1712-13) as a result of which; (1) on March 23, 1933 Ball Brothers and Knox Glass Bottle Co. and associated companies made a contract whereby, in exchange for $112,000 the Knox companies and their president agreed that they would not engage in the manufacture and sale of fruit jars in the United States for fifteen years thereafter, and agreed to transfer to Ball Brothers their inventory of fruit jars and certain equipment pertaining to their manufacture (Ex. 196); and [fol. 13522] (2) on March 29, 1933, Hartford cancelled $44,000 in notes payable by Knox Glass Bottle Co. to Hartford (Ex. 197).

372. At various times prior to April 27, 1933 Brockway Machine Bottle Co., had been engaged in the manufacture of fruit jars (Ex. 200). Negotiations looking toward the acceptance of feeder licenses between Hartford and Ball Brothers and between Hartford and Brockway were concurrent. At a conference early in January 1933, Brockway

asked Hartford for the right to manufacture fruit jars but Hartford refused to grant such a license on the ground that "fruit jars were being reserved for Ball Bros." (4472, 4476, Ex. 1184).

373. After Brockway took a feeder license from Hartford, it continued to manufacture fruit jars (Ex. 200, p. 1). On April 27, 1933, Ball Brothers and Brockway entered into an agreement by which Brockway and Warren, its President, each agreed to stay out of the fruit jar business in continental United States (except Alaska and New Mexico) for fifteen years, and Brockway sold to Ball Brothers its trademarks, two United States patent applications and molds, all relating to fruit jars, for approximately $54,000 (Ex. 200). In addition, Ball Brothers purchased its inventory of fruit jars for an additional $94,000 (B. B. Ans. Par. 59). Ball Brothers gave Brockway a royalty-free license to manufacture and use the one lehr-loading device covered by the patent application transferred by Brockway to Ball (Ex. 200—Ex. B, p. 2), "according to the invention and patent application * * * for all purposes other than for the conveying of fruit jars" for the domestic trade (Ex. 200, p. 7).

374. On May 11, 1933, Gayner Glass Works and Ball Bros. entered into an oral agreement by the terms of which Gayner Glass Works sold its fruit jar business to Ball Bros. and agreed not to manufacture fruit jars until July 1, 1934 for $30,000 (10,834, Ball Bros. Memo. filed May 28, 1942). After July 1, 1934, Gayner Glass Works did not have a license to manufacture fruit jars on Hartford equipment (Ex. H-5750).

375. In January 1933, at joint conferences between representatives of Hartford, Owens, Hazel-Atlas and Ball Bros., it was decided by these four corporations that Hazel-Atlas would enter into an amendment of its license agreement with Hartford restricting it to the production of 300,000 [fol. 13523] gross of fruit jars per year, and that Owens would enter into an amendment of its feeder license from Hartford restricting it to the production of 100,000 gross of fruit jars per year, in both cases on licensed equipment (5975-9, 3231, Exs. 1743, 189). This decision was made at the request of Ball Bros. (3229).

376. Sometime between February 20 and March 1, Hartford, Owens, Hazel-Atlas and Ball Bros. decided not to

enter into these amendments because counsel for Ball Bros. believed that such amendments would constitute violations of the Antitrust Laws (4265-6, Ex. 1745).

377. Sometime between February 1 and March 25, 1933, Owens, Hazel-Atlas, Hartford and Ball Bros. arrived at an oral understanding by which Hazel-Atlas agreed with Ball Bros. and Hartford that it would not produce or ship more than 300,000 gross of fruit jars per year except in the case of a year where the demand was unusually large (3235-6, 3253, Ex. 191), and Owens agreed with Ball Bros. and Hartford that it would not produce or ship in excess of 100,000 gross of fruit jars per year (2752-3, *cf.*, 2732, Exs. 173, 191).

378. Hazel-Atlas has never shipped more than 300,000 gross annually of fruit jars since 1932 (Ex. 947). Owens has never shipped more than 100,000 gross annually of fruit jars since 1932, excepting in 1935 when it shipped 103,110 gross (*ibid.*).

379. On March 25, 1933, Ball Bros. signed a license agreement with Hartford (Ex. 199). By the terms of that agreement, Ball Brothers agreed to pay Hartford $150,000 alleged infringement damages, and Hartford released Ball from all claims for alleged patent infringement. Hartford granted Ball Brothers the right to construct additional feeders like those which it already owned (Article 3, Secs. 18 and 19), and to lease Hartford single feeders on Hartford's standard terms. Ball Brothers gave Hartford the option to purchase (1) any Ball feeders which Ball Brothers might desire to convey to others, at $100 per feeder and (2) any of Ball Brother's patents relating to feeders on the same terms upon which it was willing to sell or license said patents [fol. 13524] to others (Ex. 199, Art. 1 § 3). Hartford agreed that in exchange for an additional $250,000 paid by Ball Brothers, called "minimum royalties", it would not thereafter, during the life of the agreement, grant any other feeder license for the manufacture of fruit jars in continental United States.

380. The feeder license agreement between Ball Bros. and Hartford specifically excluded Ball Bros. from using the licensed inventions to manufacture the ware falling in Corning's field; and in addition, excluded Ball Brothers from engaging in the manufacture, on license feeders, of milk bottles, tableware, tumblers and certain other items (Ex. 199).

381. Until 1941, Ball Brothers had never commercially used a Hartford feeder or forming machine (10,313-4). In 1941, Ball Brothers leased and used one Hartford single feeder and one Hartford 18 machine (*ibid.*).

382. Ball Brothers accepted the license from Hartford and entered into the aforesaid contracts with Knox, Brockway and Gayner because it desired to limit and restrict the production of fruit jars by excluding all other manufacturers of glassware from engaging in the manufacture and sale of fruit jars, excepting Hazel-Atlas and Owens, on whose production and sales it had secured limitations.

383. From at least as early as May 1933 until 1935, or thereafter, Three Rivers Glass Co. (hereinafter sometimes referred to as "Three Rivers") was selling fruit jars or packers ware designed to be eventually sold empty to the domestic or household preserving trade, in competition with Ball Brothers (Exs. 201-3). Three Rivers sold these jars at prices substantially below those at which Ball Brothers offered to sell its jars (Exs. 201-2).

384. After an unsuccessful attempt to purchase the Three Rivers plant in the Fall of 1934 (Ex. 1198), in December 1936, Ball Brothers, acting through its vice-president, George A. Ball, acquired the factory of Three Rivers for approximately $130,000. (Exs. H-5745, 7). The plant was turned over to a subsidiary of Ball Brothers known as Ball Glass Corp. (Ex. H-5747) and was operated for only about a year thereafter (4298-9). This purchase was made by Ball Brothers after conversations with representatives of Hartford (Ex. H-5742), and with their cooperation and approval (Exs. 1200, H-5741-3).

[fol. 13525] 385. As a result of the various restrictive agreements relating to fruit jars, a shortage of capacity to produce fruit jars existed in 1937 (2762-3, 6118, Ex. 225).

386. Ball Brothers has made substantially larger profits from its sales of fruit jars than it has from its sales of packers ware—a similar type of glass jar, but sold to a different class of purchasers and in a different market (10276-7, Ex. 2009).

387. At all times since January 1, 1933, Ball Brothers has manufactured and sold in excess of 53% of all fruit jars manufactured and sold in the United States (Ex. 947). At

all times since May 11, 1933, Ball Brothers, Hazel-Atlas and Owens have manufactured and sold in excess of 76% of all fruit jars manufactured and sold in the United States (Ex. 947). In all years since 1932, Kerr Glass Co., a manufacturer of fruit jars not under license from Hartford, has manufactured and sold less than 23% of all fruit jars manufactured and sold in the United States (Ex. 947). Other than Kerr Glass Co., there has been no other manufacturer regularly engaged in the production and sale of fruit jars since May 11, 1933 (See Ex. G. C. A. 5188).

388. At all times from March 25, 1933 until August 1, 1940, Ball Brothers demanded and received from Hartford strict enforcement of its residual exclusive license for fruit jars (4662-3; Exs. 201, 203, 210, 213, 217, 508, 1164, 1166, 1193, 1197, 1315, 1318). Hartford repeatedly refused to license others to use its inventions in the manufacture of fruit jars in order to protect Ball Brothers, Owens, and Hazel-Atlas from competition (Exs. 508, 520-5).

389. At the suggestion of F. C. Ball (Ex. 204), Hartford specifically excluded all other manufacturers of glassware who subsequently became its licensees, except Owens and Hazel-Atlas, from engaging in the manufacture of fruit jars on licensed equipment, and prohibited several other glassware manufacturers who were its licensees from manufacturing any kind of glass container if it was capable of being sealed with a closure which was also capable of sealing fruit jars (Exs. 1620, 1617, 1800). Hartford also prohibited one [fol. 13526] of its licensees from manufacturing packers ware unless the manufacture thereof was pursuant to a specific order from a packer (Ex. 789).

390. It was the policy of Hartford to attempt to prevent the manufacture by any of its licensees, other than Ball Bros., Hazel-Atlas and Owens, of glass containers, whether or not they were fruit jars as defined in the Hartford-Ball agreement of March 25, 1933, if they were subsequently to be used for the first time as or in place of fruit jars (Ex. 1290-1).

Milk Bottles and Thatcher Arrangements

391. In 1908, Owens granted Thatcher an exclusive license to manufacture milk bottles on machines embodying all Owens' inventions acquired prior to October 16, 1920 (Exs.

O-5212, 1833, Thatcher Ans. Par. 34). In 1930, Owens and Thatcher cancelled their 1908 agreement (O-5215).

392. In 1929, Owens extended its disability to make milk bottles by oral agreement with Thatcher that it would not enter the milk bottle field "without first consulting Thatcher" (Ex. 844). For many years prior to 1930, Thatcher paid Owens royalties although it did not use Owens inventions or machines, for the purpose of excluding others from competing with Thatcher in the production of milks (Exs. 782, Sched. 4, 1235, 1241).

393. Thatcher's exclusive license from Owens gave Thatcher complete dominance until 1916 over the automatic manufacture of milk bottles.

394. In 1916, Hartford developed the paddle feeder and milk bottle machine (8818) and licensed Essex, Travis, Lockport and J. T. & A. Hamilton for the manufacture of milk bottles (Ex. H-5750). In 1920, Thatcher bought out its competitors Essex, Travis and Lockport for the sum of $1,637,000 and for $100,000 bought the milk bottle machinery of J. T. & A. Hamilton. J. T. & A. Hamilton agreed with Thatcher not to sell milk bottles outside of Alleghany County. This agreement is still in force (Ex. 231, Thatcher Ans. Par. 35).

395. Owens participated in Thatcher's acquisition of the assets and licenses of Essex, Travis and Lockport and J. T. [fol. 13527] & A. Hamilton (Ex. 1235).

396. In December 1920 Thatcher secured an exclusive license in Hartford's paddle needle feeder and milk bottle machine (Ex. 231, Thatcher Ans. Par. 36). Thatcher has retained its exclusive rights to Hartford's milk bottle machine until this date, which it uses to make 80% of its total milk bottle production, or one-third of all milk bottles in the United States (8818, Ex. 248). Thatcher has used 18 of Hartford's milk bottle machines every year since 1922 (Ex. H-5749).

397. During the period from 1922 to 1928, Thatcher received licenses from Hartford to manufacture milks on the Hartford "single feeder." At various times, Thatcher complained to Hartford that it was entitled to an exclusive license to use the Hartford single feeder for milk bottles.

In 1926 Hartford assured Thatcher that it would be given "every consideration" in the granting of other licenses and that such licenses would not be granted without considering Thatcher's "side of the case" (Ex. 236, Thatcher Ans. Par. 37).

398. On April 13, 1928, Hartford and Thatcher entered into a "Consolidated Agreement" by the terms of which Hartford continued Thatcher's exclusive right to use Hartford's paddle needle feeders for the manufacture of milk bottles, and Thatcher was given the right to lease as many Hartford single feeders as it desired. In addition, Thatcher was granted an option on any exclusive license that should be offered by Hartford for milk bottle production on single feeder equipment (Ex. 240, Thatcher Ans. Par. 37).

398a. From December, 1925 to January 1, 1936, Thatcher enjoyed a rebate on its milk bottle production which gave it a competitive advantage over other Hartford milk bottle licensees, with the exception of Owens, which also enjoyed a similar rebate on its milk bottle production (Exs. 234, 237, 240, 569):

a. On December 1, 1925 Hartford granted Thatcher a rebate of 4 cents per gross on all milks produced in excess of 500,000 gross and a rebate of 5 cents on all milks produced in excess of 750,000 gross (Ex. 234).

[fol. 13528] b. In October 1926 Hartford granted Thatcher a rebate of 7 cents on its production in excess of 500,000 (Ex. 237). This rebate was limited to all production up to 1,000,000 gross by the Consolidated Agreement of April 1928, which continued until January 1, 1936 (Ex. 248).

c. On January 1, 1936 Thatcher and Owens simultaneously surrendered their right to a rebate on their milk bottle production (Exs. 1810, 11, 248, 570).

399. Hartford, Thatcher and Owens combined together in 1932 to bring Knox, Universal and Lamb under restricted Hartford licenses (Exs. 783, 787). The restricted Hartford licenses granted to Knox, Universal and Lamb in 1932 (Exs. 151, 2, 4) were "approved" by Thatcher and Owens (Exs. 246, 787).

400. Lamb accepted its restriction in the production of milks much against its will (Ex. 1354).

401. In 1932 Knox was manufacturing approximately 150,000 gross of milk bottles annually at a profit (1689, Ex. 1467).

402. Hartford limited Knox's right to make milk bottles to 75,000 gross annually on account of "its substantial commitment to Thatcher" (1700, 1720). It was unprofitable for Knox to make milk bottles in such limited quantities (1717). The limited license to Knox still left that company free to make milk bottles on its vacuum machines (Exs. 182-3).

403. On December 5, 1932 Knox sold to Thatcher its entire milk bottle business, including its limited milk bottle license from Hartford, for $250,000 in cash and 15,000 shares of Thatcher's common stock having a value of approximately $105,000. Knox agreed not to engage in the milk bottle business for 10 years (Ex. 242, Par. 39 Thatcher's Ans.).

403a. Thatcher's purpose in acquiring Knox's milk bottle business was to eliminate Knox's price competition (Ex. 244).

404. In 1929 Hartford, at Thatcher's insistence, refused to increase the amount of milk bottles which Buck could make under its Hartford license (Exs. 423, 424, 1249, 431, H-5750). In 1932 Buck sought to have all quantity limitations removed from its Hartford license (Ex. 428). In 1933 Buck again sought the removal of all quantity restrictions upon its production of milks, but was unsuccessful (Ex. [fol. 13529] 429).

405. From 1931 to 1934, Thatcher found the price-cutting competition of Peerless Glass Co. (hereinafter sometimes referred to as "Peerless") more disturbing than that of any other milk bottle producer (Exs. 1844, 244). In 1934, Thatcher acquired Peerless, whose assets were believed by Mr. Mandeville to be worth over $750,000. (Ex. 1849). Thatcher transferred to Hartford title to nine Miller feeders which it acquired by the purchase of Peerless (Ex. 244). Thatcher believed its acquisition of Peerless was "a valuable contribution" to Hartford (Ex. 244).

406. Although Hartford was free at all times to license its single feeder for the production of milks, it has always refused to grant or extend licenses for the production of

milks primarily to protect the milk bottle business of Thatcher, and after 1930, of Owens (Exs. 235, 238, 239, 738, 1247, 444, 471, 1363, 1818, Tr. 3652, 4461).

a. In March 1925 Hartford refused the request of Ross Wilson for a milk bottle license (Ex. 435).

b. In September 1925 Hartford refused to grant a milk bottle license to Old Dominion Glass Co. (Ex. 444).

c. In 1925 Hartford refused to grant a milk bottle license to St. Albans Glass Co. (Exs. 445-8).

d. In 1929 Hartford refused Three Rivers a license for the production of milks at the request of Thatcher (Exs. 1248, 482, Tr. 1206).

e. In 1930 Hartford refused to grant a milk bottle license to Witherspoon Simpson Glass Co. (Exs. 463-4; 1321).

f. In November, 1932, Hartford informed Brockway that a license for milks was "out" (4461), and Brockway received no milk bottle rights (Ex. 161).

g. In December, 1933, Hartford refused to license A. E. Floan for the production of milks (3652).

h. In March 1934, Hartford refused to increase the number of milk bottles which Universal could make under its license (Ex. 1818).

i. In October 1935, Hartford refused to extend the milk bottle license of Knape-Coleman Co. (Ex. 738).

[fol. 13530] 407. At the commencement of this suit, only Owens, Thatcher and Liberty enjoyed an unrestricted Hartford license in the production of milk bottles. Of fifteen milk botle manufacturers operating in competition with Thatcher or Owens (1) six have been acquired by Thatcher, (2) five by Owens, and (3) four have been placed under restricted Hartford milk bottle licenses.

408. In 1920, Thatcher acquired Essex, Lockport and Travis and the milk bottle business of J. T. & A. Hamilton, outside of Alleghany County (Ex. 231); in December 1932 Thatcher acquired the milk bottle business of Knox (Ex. 242); in 1934 Thatcher acquired the entire business of Peerless (Ex. 244).

409. On July 20, 1930, Owens acquired the milk bottle business of Berney-Bond (2826), which had acquired the milk bottle business of Winslow on September 27, 1927 (Ex. H-5759); and on January 20, 1931, Owens acquired the entire business of Atlantic (2826), a milk bottle producer; in December 1931, Owens acquired the entire business of Illinois-Pacific Coast Company, which was a merger of the Pacific Coast Glass Company and Illinois-Pacific Glass Corporation (Exs. 1689, H-5750), both milk bottle producers.

410. At the commencement of this suit, Buck Glass Company was limited under its Hartford license to an annual milk bottle production of 70,000 gross (Ex. 1612); Universal Glass Products Company was limited to an annual milk bottle production of 6% of total sales (10,784); Lamb Glass Company was limited to an annual milk bottle production of 10% of the total sale of milk bottles in the United States, where such total amounted to 2,600,000 gross or more per year, otherwise, Lamb was restricted to an amount of milk bottles which can be produced annually with 23,725 tons of glass (Ex. 152, Sched. C). Florida Glass Company was limited to an annual milk bottle production of 27,500 gross (Ex. 1620).

411. Thatcher and Owens dominate the milk bottle industry, as a result of acquisitions by each of them, understandings between them and agreements with Hartford.

412. From 1930 to 1938 inclusive, Thatcher and Owens together have made 65 to 70% of all milk bottle production (Exs. 1461, 2, 5, 6).

413. As a result of Thatcher's dominance in the manufacture of milk bottles, it has made excessive profits (Exs. 1603-4).

[fol. 13531] 414. Hartford has licensed the manufacture of bottles with specific provisions that they are not to be sold to a dairy (Exs. 1623, 4).

a. Hartford licensed Glenshaw to make chocolate milks, provided that if their appearance was similar to milk bottles, they were to be made for sale only to soft drink manufacturers (Exs. 1624, Sched. C).

b. Hartford licensed Glass Containers, Inc., for the manufacture of chocolate beverages, provided that they were

not produced for use as milk bottles, and provided further that all such bottles should carry a label or mark in the glass, plainly indicating that the bottles were for uses other than for milk bottles (Ex. 1623).

1935 Hartford-Owens-Hazel Agreements

415. On September 30, 1935, Hartford and Owens entered into an agreement cancelling all prior contracts, but Owens gave Hartford a royalty-free, non-exclusive, divisible and assignable license under all of its feeding and forming inventions owned or acquired until January 3, 1945 (Ex. 568). Hartford agreed to pay Owens the sum of $2,500,000 in quarterly installments of $250,000, the first to be paid December 15, 1935 (Ex. 568, §4).

416. By agreement of October 1, 1935, Hartford granted Owens a non-exclusive, non-assignable and non-divisible license to make and use, but not to sell or license, machines embodying Hartford feeder and forming machine inventions (Ex. 569, §2). Owens agreed to pay Hartford at a royalty rate no higher than the lowest rate accorded to any other licensee (*ibid.* §3). Owens was excluded from the manufacture of ware falling within Corning's field, and other miscellaneous articles (*ibid.* §2, Sched. B).

417. By agreement of October 1, 1935, Hartford granted Owens a royalty-free, non-exclusive and non-divisible license under Hartford's suction inventions owned or acquired by Hartford prior to January 3, 1945 (Ex. 571). Hartford's suction license to Owens did not include rights in Corning's field and in other miscellaneous articles (Ex. 571, Sched. A).

418. On October 1, 1935, Owens and Hartford also entered into a consolidated stacker and conveyor agreement (Ex. 579) and a consolidated lehr agreement (Ex. 580) which provided for the terms under which existing and future stackers, conveyors and lehrs were to be leased by Hartford (or Owens produced less than 15% of its glass contained cross-licenses by Hartford and Owens of their respective lehr inventions, but Hartford's license to Owens excluded Owens from the Corning field of ware and also from other miscellaneous articles (Ex. 580, Sched. C). The consolidated stacker and conveyor agreement limited

Owens' use of Hartford's stackers and conveyors to use with lehrs licensed by Hartford (Ex. 579, Sched. A, §5).

[fol. 13532] 419. On October 3, 1935, Owens and Hazel entered into cross-licensing agreements which cancelled the previous agreements between the parties (Exs. 572, 572-A). Owens gave Hazel a royalty-free, non-exclusive and non-assignable license until January 3, 1945, to make and use suction machines embodying its suction inventions for the manufacture of bottles, with the exception of milk, beverage and prescription bottles, and bottles having a capacity of more than four gallons (Ex. 572, §3). Hazel's license to make bottles containing pharmaceutical preparations was limited to 40% of its total production (*ibid.*). If Hazel used the stationary pot covered by the O'Neill patents, it was to pay Owens $50,000 (*ibid.*). Hazel granted Owens a royalty-free, exclusive, divisible and assignable license until January 3, 1945, to make, use, lease and sell machines embodying all suction inventions of Hazel (Ex. 572, Sec. 4). The Owens-Hazel 1935 agreement further provided that in the event neither Owens nor Hazel should be a licensee of Hartford (or Owns produced less than 15% of its glass containers under Hartford license), then Hazel would enjoy a royalty-free, non-exclusive, non-assignable and non-divisible license until January 3, 1945, to make and use feeders and formers as well as suction machines embodying Owens' inventions (Ex. 572, §5). In such an event, Owens would likewise enjoy a royalty-free license to make and use machines embodying Hazel's feeder, former and suction inventions under all of Hazel's patents (*ibid.*).

Effects of the 1935 Hartford-Owens-Hazel Agreements.

420. The 1935 Hartford-Owens-Hazel agreements maintained Owens in a dominant competitive position.

421. Owens continued to enjoy an inventions license, accorded to no other licensee except Hazel-Atlas, and a "most favored nation clause" accorded to no other licensee except Hazel-Atlas (Ex. 142, § 3 (a)), Capstan (Ex. 806), and Ball Brothers (Ex. 199, Art. III, §6).

[fol. 13533]. 422. Owens continued to enjoy a direct royalty-free license under Tucker, Reeves and Beatty inventions (Ex. 90, Tr. 5357, 2868), under which F. G. Smith thought it "quite possible for Owens to design a successful

feeder" (Ex. 376). Both Counsel for Hartford and F. C. Smith considered Owens' direct rights in Tucker, Reeves and Beatty inventions, which were enjoyed by no other licensee, to be of considerable value (Exs. 376-8).

423. Owens continued to enjoy an advantage over its competitors by reason of Hartford's payment of $2,500,000. These payments were in lieu of Owens' right to one-third of Hartford's divisible income (599, 1429, 1434-5; Ex. HA-5087).

424. The 1935 agreements continued the allotment of gob feed to Hartford and suction to Owens. Hartford's license under Owens' gob feed patents was extended 17 years longer than under the 1932 contract (Ex. 568, Secs. 2, 3). As Owens' license under Hartford's patents did not permit Owens to lease or sell machines embodying Hartford's patents, Owens in effect was eliminated as a possible competitor in the gob feed licensing business.

425. Owens' domination of the suction field was strengthened by a royalty-free, non-exclusive license for the life of the patents on all of Hartford's suction inventions owned or acquired until January 3, 1945 (Ex. 571, Secs. 1, 2), and by the continuance of its exclusive license under Hazel's suction patents (Ex. 572, §4).

426. The 1935 Hartford-Owens-Hazel contracts strengthened the division of glassware fields between Owens and Corning. Hartford's feeder and suction licenses to Owens excluded Owens from Corning's field (Ex. 569, Sched. B; 571, Sched. A). Hartford's lehr license to Owens also excluded Owens from Corning's field (Ex. 580, Sched. C). Owens' license to use Hartford's stacker and conveyor was limited to use with Hartford's lehrs (Ex. 579, Sched. A, §5).

Owens' Continued Participation in the Conspiracy After 1935

427. After October 1935 Owens continued its close relationship with defendants Hartford, Hazel, Ball Brothers, [fol. 13534] Thatcher, Lynch and Glass Container Association and continued its participation in the general conspiracy. (Exs. 761, 90, Tr. 5537, 2336; Exs. 568, §4, 762-3, 852, 835, 829, 833, Tr. 2707; Exs. 834, 1688, 290, Tr. 1010; Exs. 1714, 1721-3, Tr. 2365; Ex. 751, Tr. 3904-7, Ex. 505,

Tr. 4456-7, 4592, Exs. H-5550, 372, 715, Tr. 4821-2, 2936-7, 1874-89, Exs. 498, 1490-1, 264, C-6175-5, LC-5096B).

428. The 1935 contracts between Hartford and Owens did not cancel Owens direct license under Tucker, Reeves & Beatty rights, which it had agreed not to use so long as it held a general license from Hartford (Ex. 761). Owens recognized that the cancellation of its agreement not to use its T. R. & B. rights so long as it held a general license from Hartford left "enough club hanging over" Hartford and Owens so that Hartford "could reasonably hope" that Owens would not license outsiders under its Tucker, Reeves & Beatty rights (Ex. 761).

429. Owens received quarterly payments of $250,000 from Hartford from December 1935 until March 1938 (Ex. 568, §4).

430. In January, 1936, Owens shared in infringement damages paid by Ball Bros. to Hartford (Exs. 762-3).

431. In November, 1935, W. E. Levis consulted with Thatcher concerning the joint acquisition of a milk bottle Company (Exs. 852,3, 835).

432. In May 1935, W. E. Levis acquired 10,000 shares, or 6.81% of the total common stock of Thatcher on behalf of himself, other Owens directors, and Illinois Glass Company (Exs. 829, 833, Tr. 2707, O-I Ans. Par. 12), and in July 1936, William Mandeville agreed to represent Levis' stock interest on the Thatcher Board (Ex. 834).

433. In March 1936, Owens, after consultation with Hartford, bought the Rawleigh Glass Company's machinery, feeders, formers and lehrs, to take them off the market (Exs. 1688, 290, Tr. 1010).

434. After October 1935, Owens continued its active participation in the Glass Container Association (Ex. 1714, 1721-3, 1731, Tr. 2368).

[fol. 13535] 435. In February 1936, Hartford refused a license to Day of Detroit because of an agreement between Hartford and Owens that Hartford would have to get Owens' approval as to any new licensee and Owens disapproved (Tr. 2937, 1874-89; Exs. 498, 1490-1).

436. In October 1937 Owens made an agreement with Lynch by which Lynch refrains from selling its PCB ma-

chine to anyone except as designated by Owens (Exs. 751, Tr. 3904-7).

437. In 1937 Smith consulted Levis about two applicants for licenses in Texas, who were turned down by Hartford (Ex. 505, Tr. 4456-7, 4592, Ex. H-5750).

438. In December 1937, C. B. Belknap, vice-president of Owens, secured a promise from I. J. Collins that his company would not start to market heat-resistant ware without first discussing it with Corning (Ex. 372).

439. In April, 1938, Owens tried to dissuade Corning from going into the container field (Ex. 715, Tr. 4821-2).

440. Owens has retained the stationary pot and other patents acquired from O'Neill (Ex. 264).

441. Owens retained its exclusive suction license from Lynch until February 16, 1940, (Ex. LC-5096B) and from Hazel-Atlas until January 1942 (Ex. O-6178-6182).

442. Hartford and Owens did not cancel the restrictive provisions in the Hartford and Owens 1935 agreements relating to fields of ware in connection with gob feed and suction device until January 14, 1942 (Ex. O-6173-5).

Retention by Hartford of Title to Machines

443. In 1917 Hartford adopted the policy of retaining title to machines distributed by it and leasing the machines to the licensees. This policy extended to the obtaining of title to machinery which had been owned by the licensees before being put under license by Hartford, such as the feeders of Howard, Tucker, Reeves and Beatty, O'Neill, Bethel, Kucera, Harding and others. Hartford's policy of [fol. 13536] retaining title to its machines related to feeders, formers, lehrs, and stackers and the policy was adopted in order to permit Hartford to enforce the restrictive provisions in the licenses in order to prevent too much competition among Hartford's licensees (Ex. 395). This policy of retaining title to the machines has been followed from 1917 to date.

444. Except for the Hazel-Atlas feeders, the Ball feeders, and a number (24 or less) of the Tucker, Reeves and Beatty feeders now held by Capstan Glass Company (Ex. 808),

Hartford now has title to all of the feeders, formers, lehrs and stackers used by its licensees.

445. At the end of 1941 there were 510 Hartford feeders, 13 Howard feeders, 73 Miller feeders, 10 Bethel feeders, a number of Tucker, Reeves and Beatty feeders (43, less those to which Capstan Glass Company has title), 1 Kucera feeder, 3 Harding feeders, 4 Capstan feeders, 1 Meyer feeder, 2 Rau feeders, 9 Tygart feeders as to which Hartford had title and all of which were in the possession of the licensees (Ex. H-5749). At the end of 1941 Hartford had title to 18 milk bottle forming machines, 176 individual section forming machines, 6 Hartford No. 28 machines, and 2 Hartford No. 12 machines, and all which were in the possession of its licensees (Ex. H-5749). At the end of 1941 Hartford had 362 Hartford lehrs and 198 other lehrs to which it had title and all of which were in the possession of its licensees (Ex. H-5749). At the end of 1941 Hartford had 322 stackers to which it had title and all of which were in possession of its licensees (Ex. H-5749).

Hartford Licensing Policy

446. In 1917 and at all times thereafter Hartford planned its licensing policy so as artificially to restrict the production of glassware and to exclude newcomers from the industry in order to achieve "stabilization" in the industry generally, and particularly in order to stabilize the prices at which glassware was sold (Ex. 395).

[fol. 13537] 447. From at least as early as April 9, 1924, when it entered into its contract with Owens (Ex. 55), Hartford's licensing policy was based on a "principle of not favoring any over-investment in plant, tending to overproduction" (Ex. 1950), and of guarding against the "danger of price cutting" (Ex. 32) by manufacturers of glassware (See also 7095, Exs. 35, 238, 474). This policy has been implemented (a) by licensing each licensee of its equipment to manufacture only specified articles of glassware; and (b) by licensing only selected manufacturers (Ex. 395).

448. After it entered into its contract with Owens on April 9, 1924 (Ex. 55) and at the request of Owens (Exs. 52, p. 5; 885), Hartford adopted and has adhered to the policy of refusing to license any concerns to use its equipment who intended to use the bottles which they made to

contain other products which said concerns themselves manufactured or packed.

449. Since 1917, "It has not been the policy of the Hartford-Empire Company to seek or license concerns that have not previously been in the bottle industry" (Ex. 710). This policy of Hartford-Empire Company is still in force and effect (See Ex. 597).

450. Since 1925 Hartford has refused to license its equipment to, and/or has discouraged at least 25, applicants seeking to enter the glassware industry (1874-7, 1884, 1887-9, 2936-7, 1313, 3652, 6333, Exs. 434-5 442, 448, 449-61, 463-4, 466, 649, 471-4, 863, 479, 997-8, 1820, 483-4, 489-94, 1292, 1851, 1092, 1098, 1819, 506-8, 511-17, 1506-7, 597, 1300-2, H-5185-6, 1490-1, 498).

451. In granting licenses initially to manufacturers who had theretofore been in the industry, Hartford's policy was to license them only to manufacture the types of glassware which they had been making prior to the granting of the license, and to refuse licenses to manufacture types of ware which they had not theretofore been making (4611-12). On some occasions, Hartford refused to grant any licenses to manufacturers who had theretofore been in the industry in order to protect its existing licensees against new competition (1214; see Ex. 418).

452. Hartford has framed its licensing policy in order to be able to continue to offer "very substantial protection" to certain manufacturers from competition in the production and distribution of certain types of glassware (Ex. 1772, p. 5).

[fol. 13538] 453. Hartford has refused to license certain of its licensees to make beer bottles in order to stabilize the price of beer bottles (Ex. 1363; see Ex. 416).

454. Hartford protected Federal Glass Company and Hocking from competition in the manufacture and sale of thin blown tumblers and has protected Hocking from competition in the manufacture and sale of lantern globes by refusing at various times to license others to make these types of ware, or by licensing others to make only specified, limited amounts of these types of ware (Exs. 126, Tr. 1241, 4097, Exs. 418, 469, 1769, H-5012-3).

455. Hartford has refused to license certain manufacturers of glassware to make milk bottles, in order to protect Thatcher, Liberty and Owens from competition and in order to stabilize the price at which milk bottles were sold (Ex. 246; see Ex. 787, p. 1).

456. Hartford has restricted the production of Lamb and Universal under their respective license agreements in order to achieve stabilization in the milk bottle industry (Ex. 787).

457. In 1929, Hartford granted Akro-Agate Glass Co., an exclusive license for the glass marbles and balls (Exs. H-5750, p. 5; 1829).

458. In 1932, Hartford granted American Thermos Bottle Co. an exclusive license for the manufacture of certain types of vacuum thermos bottles (Exs. 1609-1610).

459. Hartford refused to license Corning to manufacture glass containers generally because of its "long established policy of endeavoring to limit competition between its licensees within reasonable bounds" (Ex. 392, p. 18).

460. Hartford has licensed its patents in such a way as to prevent the operation of the law of supply and demand in the glassware industry (Ex. 421).

461. In order to restrict production of glassware, Hartford has limited the number of feeders which licensees were permitted to have under lease (Exs. 599, 266, 1816, 1815).

462. The license restrictions were burdensome to Hartford's smaller licensees (Ex. 1772), and most of Hartford's feeder licensees, other than Owens, Hazel-Atlas, Corning, Ball, Thatcher and Liberty, found that their fields of ware were so limited as to "unduly" restrict them in the production of glassware (Ex. 409).

[fol. 13539] 463. Hartford strictly enforced restrictions in its license agreements (Exs. 520-5, 1297, 1304, 1368, H-5017-19).

464. The restrictions in the Hartford license agreements frequently operated as restrictions upon the use to which the article was subsequently to be put, or the contents which were to be packed in it (6274-9; Exs. 1908, 395 (par. 5), 527,

1294 and 1808). The purpose and result of these kinds of restrictions was to limit the types of purchasers to whom the licensees could sell the unpatented glassware made upon the licensed equipment.

465. Owens, Ball Brothers, Thatcher, Corning, Hazel-Atlas, Liberty and Anchor Hocking frequently induced Hartford to use its licensing system and the power derived by virtue of its ownership of dominating patents to assist them in artificially maintaining and stabilizing the price level at which glassware was sold (Exs. 585, 670, 583, 1192, 201, 213, 357-8, 354, 667, 669, 404, 419-20, 416, 783, 787, 244, 246, 582, 1786, 1791, 734, 788, 626, 155, 823).

466. Hartford has discouraged improvement and development of glass making machinery by its licensees by providing in its license and lease agreements that improvements on leased and licensed machinery made by the licensee were to become the property of the licensor without any compensation to the licensee (Exs. 739-40, 199, 1829, H-5015, 151-2, 159, H-5012, 157, H-5196, 248, 1606-38, H-5750).

467. Prior to 1941, with the exception of Hazel-Atlas and Owens, each licensee of Hartford was authorized to use the machinery leased and licensed in the production of specified types or kinds of glassware, and was specifically excluded and forbidden in the agreement and license or lease from using the licensed inventions embodied in the leased machinery in the manufacture of other specified types and kinds of glassware (*ibid.*).

468. Prior to 1941, no license of Hartford was licensed to produce all types of glassware on machines embodying inventions covered by patents licensed by Hartford (*ibid.* and Exs. 55, 142, 578-80).

469. Hartford has limited and restricted competition in the production and distribution of glassware by inserting in each of its patent license agreements clauses restricting (1) the type of kind of glassware which could be produced thereunder; (2) the character of the glassware as to (a) weight, (b) color, (c) capacity, and (d) composition; (3) [fol. 13540] the kind which could be produced; and (4) the market in which the licensee could distribute its products, including (a) the customer or class of customers to whom the product might be sold, and in one instance (b) the terri-

tory within which the licensee might distribute its product (Exs. 55, 142, 578-80, 739-40, 199, 1829, H-5015, 151-2, 159, H-5012, 157, H-5196, 248, 1606-38).

469a. On December 13, 1938 following an investigation of the affairs of Hartford by the Temporary National Economic Committee, Hartford granted the T. C. Wheaton Company a feeder license limited to the production of specified types of glassware (Ex. 1637). The license prohibited the licensee from using the licensed inventions to make specified types of glassware including the ware falling within Corning's field, and milk bottles, fruit jars and other specified items (*ibid.*). On August 1, 1939 the license was extended to include one additional item; to wit, food condiment dispensing devices (*ibid.*). On March 11, 1940 it was extended to include certain additional items, and in June 1940 it was extended to exclude toilet and perfumery ware (*ibid.*).

469b. On September 14, 1939 Hartford granted Kimble Glass Company a feeder license restricted to the production of certain specified items of glassware (Ex. 2003). The license agreement specifically excluded Kimble from manufacturing ware falling within Corning's field, and milk bottles, fruit jars and other specified items (*ibid.*).

470. In the Hartford Standard License prior to August 1932, Hartford's licensees were required to acknowledge the validity of all of Hartford's existing and future patents issued during the term of the license and related to the licensed machinery (e. g. Ex. 1614). Many present licensees of Hartford who accepted Standard Hartford Licenses prior to 1932 continued to acknowledge the validity of Hartford's future patents until 1941, (Exs. 740, H-5196, 1613, 1614, 1621, 1626, 1628, 1629, 1632, 1634, 1607, 1612, 1625).

471. In the July 1, 1932 agreement between Hartford and Hazel (Ex. 142, § 10), Hartford and Owens (Ex. 145, § 8) and Owens and Hazel (Ex. 148, § 7) each party acknowledged the validity and broad scope of all existing and future licensed inventions of the other party.

Owens Licensing Policy re Suction Devices

472. Since 1918 Owens has not granted a license to use its suction invention to anyone not theretofore granted a li-

[fol. 13541] cense by Owens. Today, Hazel-Atlas is the only manufacturer of glassware licensed to use the patented suction inventions of Owens (Ex. 572). Since April 9, 1924, Owens has granted no licenses on its feeder and feeder-fed forming machine patents to anyone other than Hartford (Ex. 55; see Ex. 1778). For many years past, Owens has not made, leased or sold, and has declined to lease or sell or make glassmaking machinery of any kind for use by others than itself and its subsidiaries (Ex. 874-5).

Hartford's Royalty Rates

473. The Hartford royalties, especially in years of economic depression, have been a burden on the glassware industry (4196-7; Exs. 1772, 1339, 1861, 586, 1352, H-5130).

473a. The Hartford royalties have been passed on to the ultimate consumer as part of the price of glassware (H-E br., p. 553; Tr. 8194; Ex. 823).

474. In 1937, Hartford's average feeder royalty was 13 cents, or 4% of the net sales price (Ex. 1824), and 7.1% of the cost of manufacture of the items for the production of which the royalty was charged (Ex. 1823-4). In 1939, the same average royalty of 13 cents was 4.4% of the net sales price (Ex. 1824-C), and 7.4% of the cost of manufacturing the article on which the royalty was charged (Ex. 1823-A).

475. Since 1932, Hartford has made excessive profits from royalties (9171; Exs. H-5803, H-5803-A, 415, H-5002). Since 1932 or 1933, Hartford has burdened the industry and the purchasing public with royalty rates in excess of those required to pay all its expenses and to provide it with a reasonable return upon its capital investment (See 9171, 4196-7; Exs. 1772, 1339, 1861, 586, 1352, H-5130; Exs. 1823-4, H-5803, H-5803-A, 415, H-5002).

Plans and Purposes of Defendants

476. Hartford, Empire Machine, Corning, and Owens planned and combined to obtain patents to control the glassware machinery and glassware industries (e. g. Exs. 6, 8, 9, 677, 1852, 1889, 1925, 1968, 21-4, 611).

477. Hartford and Owens planned and combined to obtain patents as "weapons of offense" against competitors (e. g. Exs. 1969, H-5876, 109, 253).

478. Hartford and Owens recognized that their aggregation of patents to control an industry might contravene the anti-trust laws (Exs. 73, 1779).

[fol. 13542] 479. Hartford and Owens planned, with the united use of patents, obtained or acquired by them to restrain competition (Exs. 49, 1968, 1732, 253).

480. Hartford, Corning, Owens, Hazel-Atlas, and Lynch combined to pool their patents to control all gob feeding and forming machinery. The pool now includes nearly 650 Hartford patents (Ex. 973, see also Ex. 16, Sched. D) 129 Corning patents (Ex. 16, Sched. D), over 65 Owens patents (Ex. 55, Sched. B, C-5953), 73 Hazel-Atlas patents (Ex. HA-5080), and at least 12 patents belonging to Lynch (Ex. 330).

481. The patents acquired by Hartford-Empire and Owens were used by Hartford and Owens to bring outside manufacturers under control.

482. Hartford brought suit on 41 patents relating to feeders, 2 patents relating to formers, and 6 patents relating to lehrs; of these 49 patents, 24 were acquired patents and 25 were patents of Hartford inventions (H-6100).

483. Hartford brought suit on 4.6% of the patents of its own inventions as against 7.6% of its acquired patents (H-6100-H-6103-4).

484. The 49 patents acquired by Hartford were used in the bringing of 27 infringement suits by Hartford (Ex. 973) and in addition 4 suits were brought by Owens on two of these patents under which Hartford was an exclusive licensee (Ex. 1595, table 5).

485. Hartford and Owens planned to create in Hartford a monopoly of all types of glass-making machinery from furnace to lehr (Exs. 388, 253, 1749, 295, 1528, 320; Tr. 2286).

486. Hartford has never constructed or marketed a new feeder of the types which it acquired (6714; 7206; 7208; 7215; 6641, Ex. 996).

487. Invention in glassmaking machinery has been discouraged and suppressed by the removal of competition in the development of glassmaking machinery. Corning and Owens ceased all development work on feeders as a result of their 1922 and 1924 agreements, respectively, with Hartford (7935, Ex. 629). The acquisition by Hartford of

Howard, Miller, Tucker, Reeves & Beatty, and Kucera, ended development work by the original producers of these machines. The acquisition by Owens of the O'Neill machine ended all development work on that machine.

[fol. 13543] *Extent of Use of Feeders and Suction Devices*

488. All but three manufacturers of glass containers in the United States using automatic machinery use feeders licensed by Hartford (11-12). These licensed feeders are used in the manufacture of 94% of all glass containers made on feeder fed machines in the United States and 69.2% of all glass containers made on all automatic machinery in the United States (Ex. 1824C). The three manufacturers who are not feeder licensees of Hartford produce 3.4% of all glass containers made and distributed in the United States (Ex. 1367).

489. Owens manufactures on suction machines 27.4% of all glass containers produced and distributed in the United States. With one insignificant exception (Ex. 266) no other manufacturer today uses suction machines in the manufacture of glass containers (*cf.* 3469-72, 10366-8).

489a. Hartford is, and has been for several years prior hereto, the sole licensor and distributor of feeders in the United States.

Glass Container Association

490. In 1925 Glass Container Association undertook to collect and disseminate statistics, and it formed a Statistical Committee that has continued to function to date (with the exception of the period from October 1933 to May 1935) (Ex. 1714). During the period from 1931 to date excepting during the period from October 1933 until May of 1935 when the Committee was inactive) the Statistical Committee, consisting of seven members, included representatives of Owens, Hazel-Atlas, Anchor Hocking or its subsidiaries, and Thatcher (Exs. 1714, C. C. A. 5188-Ex. I). Ball Brothers has been represented from 1933 to date (*ibid*), and General had a representative on the Statistical Committee from 1931 until 1938 (*ibid*).

491. In 1928, within a few months after the defendant Stevenson became its Business Manager, the Association,

adopted a policy of market sharing, which was put into effect through the sending to its members of monthly statistical reports (5157, 5061, 5399-5400), and the Association has continued to send statistical reports to its members up to date. These reports were sent out pursuant to the policy of the defendant Stevenson that the available business "should be divided among members in the industry on some kind of equitable basis" (5058).

492. The reports were sent each month to practically every member of the Association and were compiled from statistics submitted by practically every member of the [fol. 13544] Association (5093-6, Exs. 1390-1485). Until July, 1939, each of these reports contained the following information:

(1) The number of gross which it was predicted (termed "forecast") would be shipped by the total industry for the calendar year in question;

(2) The "Forecast" of shipments for the calendar year in question of each member of the Association, and the "forecast" of shipments of each member measured as percentage of the total industry "forecast";

(3) The actual production and the shipments of the industry (a) for the preceding month, (b) for the calendar year up to and including the month of the report, and (c) for the 12 months period ending the last day of the month of the report (termed "moving year");

(4) For each of the three periods of time listed above in sub-paragraph (3), the report also showed the "forecast" of the member receiving the report, and the percentage which the "forecast" bore to the industry production and shipments, and the percentage which the actual production and shipments of the member bore to the total industry (Exs. 600-6).

493. The "forecasts" were frequently referred to in the industry as "quotas" (Exs. 1340, 261, 809, 811, 810, 793).

494. It was the regular practice from 1931 to 1939 for members of the Statistical Committee of the Association to reveal their "quotas" or "forecasts" to one another (5175-9, Ex. 918).

495. It was also the policy of the Association to make "forecasts" or "quotas" available to other members of the

Association upon "specific" consent of the individual member (5177, 2516-20, 2526).

496. The statistical reports sent to the Association members were designed to limit and in some instances did limit production of glass containers by members of the Association through the threat of exposure of a deviation from its quota by each of said members and the resultant criticism if the member had sold more than its "forecast" or "quota" (Exs. 1504, C. C. A. 5295, 667, 1761, 432, 261, 809-811, 1306, 419).

[fol. 13545] 497. The dissemination of monthly reports by the Association was designed to stabilize the production and distribution of glass containers in the United States.

498. The Association was investigated by representatives of the Temporary National Economic Committee in the latter part of 1938 (5079-80, 10,421). In May or June, 1939, Armstrong Cork Company resigned its membership in the Association (5097, 5171) because it thought the dissemination of the monthly reports might be illegal (1735, 5097).

499. As a result of the investigation by the Temporary National Economic Committee and of the resignation of Armstrong Cork Company, the Association since July 1939 has omitted from its monthly reports any "forecast" figures and instead shows the total shipments of the industry for each of the preceding five years, the total shipments of the company to which the report is sent, and the percentage of the total which that company shipped during each of the five years. The reports since July 1939 have also included the active capacity and actual shipments of the industry and of the companies receiving the report for the preceding month, for the calendar year to date, and for the preceding twelve month's, as well as the percentage of production to capacity for the industry as a whole and for the company receiving the report (See Ex. 607).

500. In January 1930 Thatcher, Hartford, Owens, and Hazel-Atlas, acting with the aid of the association, engaged in a united but unsuccessful attempt to discourage Knox from increasing its capacity to produce glass containers (Exs. 630, 1841, 1842, 907, 908).

501. The Association has cooperated with Hartford to keep newcomers out of the industry, and with Hartford has

frequently been successful in excluding newcomers from entering the industry. In its efforts to keep out newcomers, the Association has occasionally attempted "to color" the "facts" in replies to persons seeking to enter the industry in such "a way" that "they might be discouraged" (5011-12, 5027-8, 5013, 5035-40, Exs. 1375, 1377, 476-7, 503-4, 509-10).

502. The Association sought to create a system of price [fol. 13546] leadership by which the members of the Association would follow the prices of Owens as published by Owens in its price lists (Ex. 1505).

503. Prices were also directly discussed by members of the Association at the Statistical Committee meetings (5398-5400, 5413-18, 10429-30, 10437-9, 1722, Exs. 1505, 1383, 1384, 1338, 791-2, 1731, 1853, 1955).

504. The purpose of the price discussions and the attempts to establish a general system of price leadership was to stabilize and fix glassware prices (5414, Exs. 1383-4, 1338).

505. Hartford approved of the plans of the Statistical Committee of the Association to stabilize prices and production in 1928 (Ex. 421) and in 1930, F. G. Smith of Hartford suggested to W. E. Levis of Owens that Owens should follow certain principles in maintaining the system of price leadership; to wit, that "such leadership should be clearly aimed at stabilization of prices at a reasonable level above cost" and that such leadership "should be maintained through the years with substantial steadiness and consistency" (Ex. 584).

506. Members of the Association having their factories on the West Coast established the practice of auditing the books of their members to determine whether sales of glass containers by the members were made in accordance with the classification of purchasers established by the Association and divided into three classes: to wit, quantity buyers, carload buyers, and less than carload buyers (5925-5933). In addition the West Coast members of the Association discussed uniform delivery charges as to interstate shipments to customers in the metropolitan area of the city of Los Angeles in the State of California (5931-3, 5938, 5925).

Acts Done by Defendants After Filing of Complaint

507. On September 23, 1940, after the filing of the complaint and answers in this case, Hartford, Corning and Empire Machine cancelled the Glass Contract and the agreement of June 30, 1916, in consideration of a payment by Hartford to Corning of $1,500,000 payable over a period of ten years, ending September 1950, and in consideration of the transfer by Hartford to Corning of title to the Peiler Punty Patent, the Howard Auto-blow Patent and the Smith Reissue Patent (Ex. H-5030). On December 1, 1940 this [fol. 13547] contract was modified so as to reduce the cash payment from Hartford to Corning from $1,500,000 to $1,125,000 payable in ten equal installments, commencing September 30, 1941 (Ex. H-5031). This agreement is still in effect.

508. On September 18, 1940, after the filing of the complaint and answers in this case, Hartford and Lynch cancelled the Forming Machine Agreement and all amendments thereto and entered into a new agreement (Ex. H-5027). In that agreement Hartford granted Lynch a non-exclusive license to sell all types of Lynch forming machines allegedly embodying Hartford's patented inventions, without any requirement that the purchasers from Lynch secure "Former Licenses" from Hartford (*ibid.*). Lynch agreed to pay Hartford a royalty upon each forming machine made and sold by Lynch which allegedly embodied Hartford's inventions (*ibid.*). This agreement is still in effect.

509. On September 18, 1940, after the filing of the complaint and answers in this case, Hartford and Lynch amended the Feeder License Agreement from Lynch to Hartford of August 23, 1933, by changing Hartford's exclusive license under the feeder inventions of Lynch to a non-exclusive license (Ex. H-5028). This license is still in existence.

510. On February 16, 1940, after the filing of the complaint and answers in this case, Owens and Lynch amended the suction inventions license from Lynch to Owens of August 23, 1933, by changing Owens' exclusive license under the suction inventions of Lynch to a non-exclusive license (Ex. LC 5096-B). This license is still in existence.

511. On August 1, 1940, after the filing of the complaint and answers in this case, Hartford and Ball Bros. entered

into an agreement amending their agreement of March 25, 1933. By the terms of the new agreement, Hartford (1) repurchased from Ball Bros. the residual exclusive fruit jar license, (2) granted Ball Bros. a non-exclusive license to make all items of glassware except bulbs, tubing and cans, and vacuum bottles, (3) cancelled the clause by which Ball Bros. gave Hartford an option to acquire its feeder patent inventions, and (4) paid Ball Brothers $425,000. [fol. 13548] Hartford and Ball released each other from all claims arising out of past representations made by either of the parties to the other, or otherwise arising in connection with the agreement of March 25, 1933 (Ex. H-5026). This agreement is still in effect.

512. On October 16, 1940, after the filing of the complaint and answers herein and after this case was originally set for trial Ball Bros. wrote the president of Knox stating that it was releasing him and the Knox Company "from all obligations" to Ball Brothers "involving the manufacture and sale of fruit jars" (Ex. B-5035).

513. On October 16, 1940, after the filing of the complaint and answers herein and after the case was originally set for trial, Ball Brothers Company wrote to the president of Brockway and stated that it was releasing him and Brockway "from all obligations" to Ball Brothers "involving the manufacture and sale of fruit jars" (Ex. B-6093).

514. On or shortly after October 8, 1940, which was after the filing of the complaint and answers in this case and after it had been originally set for trial, Hartford sent a letter to each of its feeder and forming machine licensees in which it stated (Ex. H-5025) that it was "removing all restrictions and exclusions" from its license agreements and that it would "shortly send" to each of its licensees "an agreement" which would "amend" the then existing license agreements in the respect indicated; and that the "amendment" meant that the licensee would "hereafter be permitted to use" its "Hartford licensed and leased machinery to manufacture glass containers and glassware generally without limitations as to type, use, quantity, market, weight, capacity, color or composition" (*ibid.*).

[fol. 13549] 515. None of the proposed contracts of amendment referred to in Paragraph 514 was executed until on

or about February 28, 1941. Nine Hartford licensees, including defendants Ball Brothers, Anchor Hocking and Thatcher (including their subsidiaries) have never entered into the proposed amendments (Exs. H-5781, H-5783-6, H-5788-91), and the feeder license agreements between them and Hartford referred to above, and containing restrictions as to the type of ware that may be made on licensed equipment, are now in full force and effect (Exs. 248, 808, 1605-7, H-5026, 1633).

516. On October 2, 1941 after the complaint and answers had been filed in this case and seven months after the commencement of the trial herein, Hartford granted each of its "Former Licensees" a license to use machines theretofore manufactured and purchased from Lynch, and allegedly embodying Hartford inventions, without royalty and without ware restrictions or exclusions (Ex. H-5752).

517. On December 31, 1940, after the filing of the complaint and the answers in this case, and after it had been originally set for trial, Hartford cancelled the exclusive license of American Thermos Bottle Company and granted it a non-exclusive license under two of its patents to make all articles of glassware (Ex. H-5032).

518. On September 17, 1940, after the complaint and answers had been filed in this case, the exclusive license for toy marbles and lithographer's balls granted by Hartford to The Akro-Agate Company was withdrawn (Ex. H-5750, p. 15).

519. On January 14, 1942 shortly before the trial of this case ended, Hartford and Owens entered into amendments to the 1935 agreements, eliminating all restrictions with respect to fields of ware in connection with gob feeding and suction devices (Exs. 6173-6).

520. In January 1942, shortly before the trial of this case ended, Owens notified Hazel-Atlas that it was waiving the exclusive character of the 1935 license agreement from Hazel to Owens under suction inventions and waiving the ware exclusions under such license agreement (Exs. O-6178-O-6182).

[fol. 13550] *Arrangements with Anchor Hocking and Its Predecessors*

521. Capstan was a licensee of Tucker, Reeves and Beatty and used their feeders from 1919 to 1925 (2549, Ex. 808).

Capstan manufactured a general line of glass containers and some table ware (Ex. 808).

522. In 1926, Capstan entered into a license agreement with Hartford (Ex. 808), by which Hartford licensed Capstan under Hartford patents to use Capstan's 24 Tucker and Reeves feeders for the manufacture of specified types of glassware. This agreement included the exclusive rights which Capstan formerly held from Tucker, Reeves and Beatty to manufacture packers ware of block mold type and all other pressed ware, with certain exceptions (Ex. 808, Sched. C). Capstan agreed to pay higher royalties to Hartford for the use of its Tucker and Reeves feeders than it had paid Tucker, Reeves and Beatty (2551). Hartford agreed that on all feeders used by Capstan, the rate of royalty would be as low to Capstan as to any other licensee (Ex. 808, Art. III, Sec. 8). Capstan was the only company except Owens (Ex. 569, Sec. 1(b)), Hazel (Ex. 142, Sec. 3(c)), and Ball (Ex. 199, Art. III, Sec. 6) to which Hartford accorded this so-called "most favored nation clause" (Ex. 1772). Capstan was permitted to retain title to its Tucker and Reeves feeders. Capstan agreed to use its licensed feeders to produce only certain specified articles which were not to be made of the glass composition known as opal, nor to exceed one hundred ounces in weight; it agreed not to manufacture under the license, beers, liquors, articles falling within the Corning field, milk bottles, lantern globes, and certain other articles. This agreement of 1926 has continued in effect until today (Ex. 1827). From 1926 to 1937, Capstan paid $1,150,731.68 in royalties to Hartford (Ex. 1584).

523. From 1931 until 1939 (with the exception of the period from October 1933 to May 1935), G. F. Rieman was a member of the Statistical Committee of the Glass Container Association, representing Capstan from 1931 to 1938, and representing Anchor Hocking in 1938 and in 1939 (Ex. 1714). As such he was responsible for enforcing Capstan's policy of confining its production within the [fol. 13551] limitations of its quota established by the Association (See Exs. 809-11).

524. Hocking had been in the business of manufacturing tableware from the time of its organization in 1905 until 1938 (4017, 4014), during all of which period I. J. Collins was its president (4014).

525. In 1918, Hocking entered into a contract to license and lease automatic feeders from Hartford-Fairmont. Hocking agreed not to use those feeders in the manufacture of any kinds of ware other than those listed; *viz.*, pressed ware, including chiefly tableware (4017). That license has been renewed and amended from time to time. Under the present contract, Hocking agreed not to use the licensed feeders in the manufacture of milk bottles, nursing bottles, fruit jars, jelly glasses, bulbs, tubing and cane, signal and optical ware, heat-resisting ware, many kinds of electrical and illuminating ware, certain types of pressed ware, vacuum bottles, insulators, marbles and lithographers balls (Ex. 1605, letter amendment dated May 26, 1937).

526. For some time prior and subsequent to October, 1927, Hocking enjoyed exclusive rights to use Hartford feeders in the manufacture of lantern globes (Ex. 126), and a preferential position in connection with thin blown tumblers, resulting from the fact that Hartford declined for two years to license Macbeth-Evans to make this item because of Hocking's refusal to give its consent (4097, Ex. 418).

527. On April 20, 1926, I. J. Collins, in conjunction with certain business associates, purchased practically all of the common stock of Monongah Glass Company (hereinafter sometimes referred to as "Monongah") (4025), one of the most valuable assets of which was approximately one-sixth of the total number of shares of Hartford's outstanding common stock (4026).

528. Collins made this purchase in order to become a director of Hartford (cf. Tr. 4021, Ex. 1135A) and in order to secure for Hocking Monongah's license rights to use Hartford feeders to manufacture pressed tumblers (4021), Hocking's feeder rights being limited to the manufacture of tumblers by a different process.

[fol. 13552] 529. On May 4, 1926 Collins was elected director of Hartford in place of Heintzelman, president of Monongah (4027-8). As a director of Hartford, Collins, along with the other directors, became responsible for the management of that company (Ex. 16—By-laws, Art. II, p. 33).

530. In January 1927, Collins and associates exchanged all of the Monongah common stock for a substantial minority of the common stock and notes of Turner Glass Company (hereinafter sometimes referred to as "Turner"), a manufacturer of glass containers (4037); and immediately thereafter Collins became a member of the executive committee and board of directors of the Turner Glass Company (5384, Ex. 1126).

531. Following conversations on this subject matter with F. G. Smith and others in Hartford (4042-7), Collins, in the Fall of 1927, acting on behalf of Turner (Ex. AH-5119), helped to arrange for the sale of the Hartford stock owned by Turner's subsidiary, Monongah. Collins and his associates themselves purchased one-third of it at $35 per share (4041).

532. Attempts were made by representatives of Thatcher, Owens, the Association, and others to secure the cooperation of Turner with other manufacturers of glass containers in order to stabilize the price of glassware, by adhering to its "quota" as allotted to it by the Association and by submitting to proposed combinations and mergers with Thatcher, Hocking, and other producers of glass containers (5397-5413, 5434-6). The object of these plans was to reduce production and thereby lessen the supply of glass containers which would effect an increase in the price at which they could be sold (5397-5401, 5417).

533. In the first part of 1930 Turner was behind in its royalty payments to Hartford (5442). In the Summer of 1930 H. C. Mandeville, Chairman of the Board of Thatcher (Ex. 848), offered Harry D. Hartley, president of Turner, 20,000 shares of Thatcher's stock "to put Turner Glass Company through the wringer" (5436). Hartley refused (*ibid.*). In the Fall of 1930 Hartford forced Turner into receivership (6093) due to the fact that Turner was behind [fol. 13553] in its royalties (6093).

534. On February 11, 1931, Collins, on behalf of Hocking, executed a contract with Thatcher and Hartford (Ex. 1140) which provided for the organization of a company later known as General Glass Corporation (*ibid.*). Thatcher and Hocking agreed to form the new company and each to subscribe to half of its stock (*ibid.*). The corporation was to bid in and acquire the assets of Turner at the Receiver's

sale. Hartford agreed to grant the new company a direct license for all products covered by Turner's licenses (*ibid.*). It also agreed to withdraw the license rights of Monongah, to give the new corporation a temporary license for 1931 for all products covered by Monongah's license, and also to give it the option to make such license permanent upon payment of $65,000 (*ibid.*). In Paragraph 5, Thatcher and Hocking agreed "to forthwith enter into negotiations and to prosecute such negotiations to a conclusion if possible looking to merger or combination" of Thatcher and Hocking with the proposed new corporation (*ibid.*). Hartford agreed, if this merger occurred, to transfer the license rights formerly held by both Turner and Monongah to the merged corporation (*ibid.*).

535. The purpose of this proposed combination of Thatcher and Hocking, which was never carried out, was to create a third large manufacturer of glass containers in the industry which would have the effect of stabilizing the production and price of glassware (4061-3, Ex. 275).

536. On April 4, 1931, General was formed (4151) by Hocking and Thatcher under the terms of the contract (Ex. 1140). Hocking and Thatcher each contributed half of its capital (Ex. 1140). Collins was elected president, Fulton secretary and treasurer, and Collins, Mandeville, Fulton and Fisher were among those elected directors (Ex. 313).

[fol. 13554] 537. On or about April 15, 1931, pursuant to a plan agreed upon with I. J. Collins and H. C. Mandeville, Hartford cancelled the feeder licenses of Monongah (Ex. 313, Par. 1).

538. Sometime prior to June 22, 1931, General withdrew all of its molds then being used by the Monongah Glass Co. (Ex. 1137).

539. On December 10, 1931, the plants and equipment of Monongah were leased through the instrumentality of a liquidating corporation (6181-2) to General until March 31, 1935, with an option to purchase them during that period (Ex. AH-5121). General did not operate the plant of Monongah beyond May 1, 1932 (4223).

540. Hartford and Thatcher and Hocking at all times desired to close down the factory of Monongah in order to

prevent it from continuing to engage in the production and distribution of glassware.

541. On October 24, 1935, because of his desire to retain 450,000 gross of General's business for the benefit of Hocking, Collins refused to enter into a deal proposed by W. E. Levis and H. C. Mandeville for the sale of Hocking's share of the stock in General to Illinois Glass Company (Exs. 852, 1167). Instead, Collins proposed on behalf of Hocking to buy Thatcher's interest for $750,000 which was a price which would net Thatcher $505,000 profit (Ex. 852). Thatcher accepted this offer (Exs. 852, 1167). Thereafter, Hocking operated General as a wholly-owned subsidiary until December 4, 1937, when it took over its assets. General was subsequently dissolved (6387).

542. For some years prior to 1937, I. J. Collins had been attempting to effectuate combinations between various companies in the glass industry (Exs. 1140, par. 5; 851-2) in order to achieve stabilization of production and prices of glassware (4050-1).

543. Defendant W. E. Levis, president of Owens, had always been interested in bringing about a strong combination in the industry (2842) in order to arrive at stability (2843), and frequently discussed with representatives of other glassware manufacturers means and methods of bringing about such combinations (2852).

[fol. 13555] 544. In 1937, Collins and his associate in Hocking, the defendant Fulton, prevailed upon Levis, who was not only president and director of Owens but also president of Illinois Glass Company (2420), to induce the last-named company to purchase a substantial interest in Hocking. Collins, Fulton and Good, who controlled Hocking (4298), were willing that Mr. Levis and his associates should become a "partner" with them in the Hocking venture (2862, 3).

545. The Illinois Company at this time was controlled by the Levis family (2486, 7), and had a large stock interest in Owens (2422). Owens at this time was in competition with Hocking in the manufacture of pressed tableware (2486, 7, 2834, 5, Ex. 578—Sched. C) and was also in competition with General, Hocking's subsidiary, in the manufacture of bottles (2838).

546. Levis, on behalf of Illinois, accepted a commitment to purchase $1,125,000. of Hocking's stock, and also succeeded in getting Allied Chemical and Dye Co., one of whose officers was on the Owens Board, to invest another $1,125,000. in Hocking stock (2859-71). The agreement of Illinois and Allied Chemical and Dye Company to take the share in Hocking was made conditional as to a third of such shares upon the execution of a proposed combination of merger between Hocking and Anchor Cap Corporation and its subsidiaries (Ex. 1665).

547. In May of 1937, there were negotiations between I. J. Collins of Hocking and representatives of Anchor Cap Corporation for the purpose of bringing about a merger between Anchor Cap Corporation and Hocking. The defendant W. M. Levis aided in bringing about this merger (4168-9, 2859-60).

548. The contract to effectuate the merger was executed on October 29, 1937, and signed by Collins on behalf of Hocking (Ex. AH-5129). Pursuant to this contract on December 31, 1937, all of the properties of Hocking (except cash for the payment of Hocking's indebtedness), including "the inventions, patents and good will of the going business of Hocking and General, together with the trade marks and trade names connected therewith, and the right to use their [fol. 13556] names or names similar thereto as their successors" (Par. 11), were transferred to Anchor Cap Corp. Anchor Cap issued to Hocking 441,852 of its common voting shares which were distributed to Collins and his associates, Hocking was dissolved (Par. 25), and the name of Anchor Cap Corporation was changed to Anchor Hocking Glass Corporation (Par. 18 (b)). Both parties warranted that their licenses and those of their subsidiaries from Hartford were in full force with all royalties paid when due (Par. 9). It was also provided in Par. 29 that Hocking should issue 30,000 of its shares for the $2,250,000 to be invested by Illinois and Allied Chemical and Dye Co.; but no part of this sum was invested until after the combination of Hocking and Anchor Cap Corp. (4171).

549. Collins became president and a director of Anchor Hocking and, with his associates, received in excess of 30% of its stock (AH br. p. 20). By purchasing 700 shares of the stock of Illinois early in 1938 (2870), Collins also obtained

some interest in the Anchor Hocking shares purchased by Illinois.

550. The purpose of the combination of Hocking and Anchor Cap Corp. and the purpose of the participation in that combination of defendant W. E. Levis was in order to reduce competition and achieve stability in the production and distribution of glassware (2842-3, 2852, 4050-1, Exs. 275, 1140, par. 5; 851-2).

Arrangements with Liberty

551. Liberty originally obtained its feeders from Miller Glass Engineering Company (Ex. 1632, preamble).

552. On May 25, 1926, Liberty entered into license agreements with Hartford (Ex. 1632), under which Liberty's five Miller feeders (See Ex. 1632) were licensed by Hartford for the production of milks, vinegars, packers-ware, pressure-ware, and shoe polishes (Ex. 1632). The license as to milk bottles was unlimited, a right held from 1930 to 1941 by no other licensees of Hartford except Thatcher and Owens (4621, 1573-5, Exs. 248, 55, 145, 578—Sched. C).

[fol. 13557] 553. In Sec. 8 (a) of the license agreement (Ex. 1632), Liberty acknowledged the validity of all patents that might be issued upon Hartford's pending applications and of all patents owned, controlled or licensed by Hartford during the term of the license to Liberty, and relating to the licensed machinery or the methods or processes performed thereby.

554. Under the license agreement (Ex. 1632), Liberty agreed to use each machine for delivering glass to not more than one forming machine (Sec. 3b) and to confine itself to the above mentioned articles of ware, which were not to be made of the glass composition known as opal, nor to exceed 72 ounces in weight (Sched. B). With respect to vinegars, packers and pressure ware, the license was subject to forfeitures upon failure of the licensee to produce 10,000 gross in either of any two consecutive years (Sched. B). Liberty was expressly excluded under its license from the manufacture of articles falling within the Corning field, pressed-ware, nursing bottles, tumblers, fruit jars, lantern globes and other specified articles of lesser importance (Sched. B). By a letter amendment dated November 25, 1931, and ac-

cepted November 30, 1931 (Ex. 1632), Liberty's right to produce bottles for vinegar and packers ware was terminated for failure to produce the required quota, and Liberty was extended the right to produce "blown narrow neck bottles for beverages such as beer, soda, charged and still waters" and blown narrow neck flasks. On May 28, 1934, the Hartford-Liberty license agreements were renewed for a period of eight (8) years (Ex. 1632).

555. These license agreements continued unchanged until March 1941, with the exception that the royalty rates were amended by letter agreements of February 7, 1936, and May 8, 1936 (Ex. 1632).

556. In 1928, and for some years thereafter, Three Rivers Glass Company was producing and selling milk bottles in competition with Liberty (Exs. 582, 1343, 1787). These milk bottles were made on feeders not under license from Hartford (Ex. 5750). Liberty objected to this competition [fol. 13558] (Ex. 582). Hartford promised Liberty that it would serve notice of infringement on Three Rivers immediately in order to give Liberty an opportunity to "urge them to behave themselves." (Ex. 421).

557. On August 1, 1929, Three Rivers transferred title to Hartford to three of its four feeders and Hartford licensed Three Rivers to use these three feeders for the manufacture of specified types of glassware, but the license agreements excluded Three Rivers from using their feeders to manufacture milk bottles (Ex. 1785). Three Rivers continued to use its fourth feeder, not under license from Hartford, in the manufacture of milk bottles (*ibid.*). The continued manufacture by Three Rivers of milk bottles in competition with Liberty caused Liberty to complain that Three Rivers was selling milk bottles at prices below those which Liberty had been charging (Ex. 586).

558. On August 10, 1931, Liberty wrote to Hartford and requested Hartford to compel Three Rivers to cease to manufacture milk bottles (Ex. 1343).

559. By August, 1932, Three Rivers was behind by approximately $6500 in its royalty payments to Hartford (Ex. 1786).

560. In September 1932, Safford of Hartford had a conference with George Collins, then President of Liberty, in

which Collins requested that Three Rivers be put out of the milk bottle business and suggested that Liberty would purchase Three Rivers (Ex. 1787). Hartford promised to advise Collins of all steps which Hartford took in connection with Three Rivers (*ibid.*). Hartford offered the services of its local counsel in Texas to give Liberty any assistance that Liberty might need (Ex. 1787).

561. In October 1932, Hartford instituted an action against Three Rivers to secure the return of its feeders because of the price cutting competition of Three Rivers and because it was behind in payment of its royalties (Exs. 1785, 1791).

562. In November 1932, Three Rivers went into receivership (Ex. 1785).

563. Thereafter, at the request of Liberty, Hartford refused to negotiate with the Receiver of Three Rivers for [fol. 13559] settlement of its law suit then pending against it, unless Three Rivers agreed to cease to manufacture milk bottles on feeders which Hartford thought infringed its patents (Exs. 1792, 1796-7, 482), and informed the Receiver that it would not grant Three Rivers "any license unless it was under some arrangement" with Liberty (Ex. 482).

564. On June 21, 1933, Liberty purchased from Three Rivers its milk bottle business for $44,000, and Three Rivers agreed to refrain from manufacturing or selling milk bottles in any part of the United States excepting California, Washington and Oregon, for a period of ten years from the date of the contract (Ex. 1206).

565. In July 1934, Knape-Coleman Glass Company (hereinafter sometimes referred to as "Knape-Coleman"), which was not then a licensee of Hartford, was selling milk bottles at prices below those charged by Liberty and in competition with it (Exs. 788, 736). Liberty complained of this to Hartford and demanded that Hartford take action to prevent this (*ibid.*).

566. Prior to October 1934, Hartford refused to grant Knape-Coleman a license under Hartford feeder patents to manufacture milk bottles (2206-7, 2210-13).

567. Liberty harassed Knape-Coleman and caused it to lose business by informing its customers that it was going

to be put out of business as a result of a patent infringement suit to be filed by Hartford (2209).

568. In accordance with a promise made by Hartford to Liberty (Exs. 736, 433), Hartford, on October 11, 1934, filed suit to enjoin Knape-Coleman from alleged infringement of Hartford's patents (Ex. 973). On April 29, 1935, Knape-Coleman settled the suit by taking a restricted license which expired as to milk bottles on November 15, 1935 (Ex. 789), and by selling its two feeders to Hartford for $10,000 (2217; Ex. 790).

569. In July 1937, Liberty Glass Company purchased all of the physical assets of Knape-Coleman. These assets, according to the contract, pertained especially to the milk bottle business (Ex. 1690). The officers and principal stock-[fol. 13560] holder of Knape-Coleman further agreed not to engage in the manufacture and sale of milk bottles, cheese jars, and fruitjuice bottles with milk bottle finish and caps, for a period of five (5) years, anywhere in the United States (Exs. 1690-1691). Liberty paid $50,000 for this purchase, $10,000 of which was for the physical assets and $40,000 for the agreement not to compete (Ex. 1691). At the time of this acquisition, Liberty had no intention of operating the Knape-Coleman plant (Ex. 1296).

570. Since 1927, Liberty has cooperated with Thatcher for the purpose of dividing the milk bottle market and maintaining the dominance of each in its particular territory (Exs. 1236, 1238-9, 1248).

571. In 1929, Liberty threatened to build a factory for the manufacture of milk bottles in St. Louis, and Thatcher requested Hartford to refuse to permit Liberty to do this (Ex. 1248), and following conversations between Liberty and Thatcher and between Liberty and Hartford, Liberty agreed to abandon its plan to build a plant at St. Louis (Exs. 425, 430).

[fol. 13561] *Individual Defendants*

572. *F. Goodwin Smith* was general manager and a director of Hartford-Fairmont from 1915 until sometime in 1922 (3). He was president of Hartford-Fairmont in 1922 (Ex. 19). He was a director and vice-president of Hartford from 1922 until 1927 (3). From 1927 to date he has been president and a director of Hartford (*ibid*).

573. As president of Hartford-Fairmont or as vice-president or president of Hartford, he negotiated and signed on behalf of Hartford-Fairmont and/or Hartford, among others, the following contracts: (a) the Glass Contract betwe-n Hartford-Fairmont, Hartford, Corning and Empire Machine of October 6, 1922 (Ex. 19), the contract between Hartford and Owens of April 9, 1924 (Ex. 55), the contracts of July 1, 1932 between Hartford and Hazel-Atlas and between Hartford and Owens (Ex. 142-7), the 1935 contracts between Hartford and Owens (Exs. 568-70), the contract of March 25, 1933 between Hartford and Ball Bros. (Ex. 199), and the agreements between Hartford and Lynch of August 23, 1933 (Exs. 329-30).

574. He was also active in the negotiations and participated in the acquisition by Hartford of (a) the assets including the patents and applications of Howard (b) the patents and applications of Tucker, Reeves, and Beatty, (c) the patents and applications of William J. Miller (d) the patent applications of Rankin, (3) the patent applications of Kucera, (f) the patents and applications of O'Neill, (g) the patent applications of Sears and Lobb, and (h) the patent applications of Headley and Thompson.

575. He has also been actively engaged since 1915 in determining the licensing policy of Hartford or its predecessor as to (a) licensing of new manufacturers to use Hartford equipment, (b) imposition of restrictions in licenses for the purpose of stabilizing the glassware industry, and (c) the retention of title by Hartford to machinery distributed by it, and the acquisitions of title in Hartford of machinery built by others.

[fol. 13562] 576. *Bartlett Arkell* was president of Hartford-Fairmont from 1912 until 1922 (4, 6546-7). He was a director of Hartford-Fairmont during the same period, a member of the Executive Committee of the Board of Directors of Hartford-Fairmont for some years during the same period (See Exs. 58, 1872, 1890), and he has been a Director of Hartford since its formation in 1922 (See Exs. 1639-44, H-5025), and has been for some time and now is the Chairman of the Board of Directors of Hartford (6546-7).

577. As president of Hartford-Fairmont, Arkell signed the June 30, 1916 contract between Hartford and Empire

Machine (Ex. 1). As president of Beech-Nut (a stockholder of Hartford-Fairmont), Arkell signed the 1922 Agreement for the Formation of Hartford (16). Arkell attended several meetings of the Executive Committee of the Board of Directors of Hartford-Fairmont where steps were taken which led to the acquisition of the Howard Company (Exs. 58, 1872, 1889-90), and as president of Beech-Nut he executed the agreement for the purchase of the stock of the Howard Company (Ex. 61).

578. As a director of Hartford, Arkell voted to ratify and approve (Ex. 1641) the July 1, 1932, contracts between Hartford and Hazel-Atlas and between Hartford and Owens (Exs. 142-7), the feeder license agreement between Hartford and Knox of August 25, 1932 (Ex. 151), the feeder license agreement between Hartford and Universal Glass Products Company of September 15, 1932 (Ex. 154), the feeder license agreement between Hartford and General of September 16, 1932 (Ex. 1606), the Nivison-Weiskopf Settlement Agreement between Hartford and General of September 16, 1932 (Ex. 288), and the agreement for the acquisition of feeder patent rights between Kucera and Hartford of August 25, 1932 (Ex. 565). He voted to "confirm and approve" (Ex. 1643) the contracts of August 23, 1933, between Hartford and Lynch (Exs. 329-30).

579. *Robson D. Brown* is a member of the Executive Committee of the Board of Directors of Hartford (5955-6). He has been resident patent counsel for Hartford since April, 1924, a director of Hartford since 1932, and one of its vice presidents since 1937 (*ibid.*). He was also treasurer of Hartford from 1934 to 1936 (*ibid.*). Prior to his [fol. 13563] employment by Hartford, he was patent attorney for the Howard Company (*ibid.*).

580. Brown was present at the Hitchcock demonstration held on January 25, 1924 (Ex. 1870). He was one of the attorneys for Hartford, who, in July 1927, filed the brief before the Board of Appeals of the Patent Office to obtain allowance of the Peiler "Stuffing" application, and such brief did not disclose to the Board the facts of the 1924 Hitchcock demonstration.

581. The Clarke Article was written by Hatch, acting under the authority of Brown (4354). Brown knew that

this article was to be used in the Patent Office to influence the Examiner to give favorable consideration to the broad claims in the Peiler "Stuffing" application (Exs. 136-7). The Clarke Article was submitted with Hartford's brief before the Patent Office Board of Appeals, signed by Brown as one of the attorneys for Hartford (Ex. H-5220, pp. 363, 592), but neither Brown nor Hartford ever revealed to the Patent Office or to the Courts the authorship of the Clarke Article.

582. Brown deferred the allowance of Tucker and Reeves applications, after they had been acquired by Hartford, and caused the abandonment of some of those applications (6076-7).

583. As a director of Hartford, he voted to ratify and approve (Ex. 1641) the contracts of July 1, 1932, between Hartford and Hazel-Atlas and between Hartford and Owens (Exs. 142-7), the feeder license agreement between Hartford and Knox of August 25, 1932 (Ex. 151), the feeder license agreement between Hartford and Universal Glass Products Company of September 15, 1932 (Ex. 154), the feeder license agreement between Hartford and General of September 16, 1932 (Ex. 1606), the Nivison-Weiskopf settlement agreement between Hartford and General of September 16, 1932 (Ex. 288), and the agreement for the acquisition of feeder patent rights between Kucera and Hartford of August 25, 1932 (Ex. 565).

[fol. 13564] 583a. As director of Hartford, Brown voted "to confirm and approve" (Exs. 1642-3) the contract between Ball Brothers and Hartford of March 25, 1933 (Ex. 199), and the agreements of August 23, 1933 between Hartford and Lynch (Exs. 329-30).

583b. Brown was a member of a committee of the Board of Directors of Hartford which considered revisions of the contracts with Owens of July 1, 1932, and which resulted in the 1935 contracts between Hartford and Owens (Ex. 1644).

584. *Roger M. Eldred* was Production Manager of Hartford in 1923, assistant to F. G. Smith (then Vice-President) from September 1924 to October 1925, Assistant Manager of Hartford from October 1925 to May 1929, Manager of Hartford from 1929 to 1932, General Manager of Hartford

from 1932 to December 1936, and Vice-President of Hartford from December 1926 to date (4844). Eldred was also a member of the Licensing Committee of Hartford from 1925 to date (4597).

585. As General Manager of Hartford, he signed and negotiated the contract of August 25, 1932 by which Hartford acquired the Kucera feeder patent rights (3562-74, Ex. 565); the feeder patent license and lease agreement with Brockway of January 23, 1933 (4472-81, Ex. 161). Eldred signed the feeder license agreement between Hartford and Northwestern Glass Company of August 1, 1933 (Ex. 1630).

586. As a member of Hartford's licensing committee, Eldred participated in enforcing Hartford's policy of refusing to license certain manufacturers of glassware to make beer bottles, in order to stabilize the price thereof (Ex. 1363). He also carried out Hartford's policy of refusing to license newcomers; and specifically either refused or discouraged Day of Detroit pursuant to an understanding with Owens (2937).

587. *Karl M. Peiler* has been chief engineer of Hartford from the time of its formation in 1922 to date (6443), he was a director of Hartford-Fairmont in 1922 (Exs. 1881, 1881A), and since 1936 he has been one of Hartford's Vice-Presidents (6443).

588. Peiler was present at meetings of the Hartford-Fairmont Executive Committee on May 16th and June 2, [fol. 13565] 1922 at which steps were taken leading toward the acquisition of the Howard Company (Exs. 1872, 1890).

589. Peiler was present at the Hitchcock demonstration on January 25, 1924 (Ex. 1870). After the Hitchcock demonstration, Peiler approved of the settlement of the Hamilton suit (6596) and approved of the agreement with Owens of April 9, 1924 (6597). Peiler presented the Hitchcock machine to the Patent Office as a feeder incapable of carrying out gob feeding (H-5220, pp. 288-9, 501-5, pp. 570-2).

590. In a suit brought to compel the Patent Office to issue the Steimer patent No. 2,075,571 and the Peiler patent No. 2,073,572, brought in the Supreme Court of the District of Columbia, Peiler presented the Hitchcock feeder to the

Court as a feeder incapable of carrying out the gob feed method of glass feeding (Ex. H-5230, pp. 63-73). This Court dismissed the suit (Ex. H-5230, pp. 30-31), but the Court of Appeals for the District of Columbia ordered the Commissioner of Patents to issue the patents (*Hartford-Empire Co.* v. *Coe, Commissioner of Patents*, 82 F. 2d 741 (App. D. C., 1936)).

591. When Owens became alarmed at Hartford's suction developments and at the threat to its dominance created by such developments (Ex. 631), Peiler recommended that Hartford enter into an agreement with Owens on suction developments for the purpose of keeping "peace in the family" (Ex. 1883; see Tr. 7260). This recommendation was accepted (Ex. 147).

592. *Arthur T. Safford* is now and has been for several years, Secretary of Hartford (712). As Secretary of Hartford he attested the following contracts: (1) Hartford-Hazel contracts of July 1, 1932 (Exs. 142-3); (2) Owens-Hartford contracts of July 1, 1932 (Exs. 144-7); (3) Hartford feeder license agreements with Knox, Universal Glass Products Co. and Lamb in August, September and November respectively of 1932 (Exs. 151-4); (4) Ball-Hartford contract of March 25, 1933 (Ex. 199); (5) fruit jar agreement between Hartford and General of March 23, 1933 (Ex. 198); (6) Lynch-Hartford agreements of August 23, 1933 (Exs. 329-30); and (7) Owens-Hartford agreements of September 30 and October 1, 1935 (Exs. 568-71).

593. On behalf of Hartford, Safford took an active part in the negotiations leading to the license agreement between Hartford and Brockway (8889-8895). He also took [fol. 13566] part in the negotiations leading to Hartford's acquisition of the Kucera patent rights (8902-9), and attested Hartford's agreement with Kucera (Ex. 565). On behalf of Hartford, he agreed with Owens in December 1934 that Hartford would first discuss with Owens any new license requests for insulators before granting such a license to others (Ex. 1281). In December, 1933, on behalf of Hartford, he refused to grant to A. E. Floan a license for beverage and milk bottles (3652). Safford also took part in negotiations leading to Hartford's agreement with Lynch in 1933 (1065).

593a. Safford was in charge of the preparation of Hartford licenses and leases (e. g. 8832), and signed, on behalf of Hartford, numerous feeder license agreements (Exs. 1612-3, 243, 1607-8, 1620, 266, 1611, 1619).

594. *Theodore L. Champeau* is Treasurer of Hartford (8329, H-E Ans., Par. 17). As Assistant Treasurer in 1929, he had charge of the preparation of invoices of Hartford feeder patent litigation and of the accounting thereof with Carter (see Exs. 117-120, 114). Champeau approved the voucher dated August 10, 1932 (Ex. 1267) for $7,500 cash wired to R. F. Hatch to be paid out by Hatch to William P. Clarke.

595. *A. M. Pease* has been employed in the executive branch of Hartford from 1928 to date, and has been on Hartford's licensing committee for many years (4597-8). He has been Assistant Treasurer of Hartford from January 1937 to date (*ibid.*). He was Assistant General Manager of Hartford at least in 1932 (Ex. 159).

596. Acting on behalf of Hartford, he negotiated the feeder license agreements between Hartford and Latchford, Maywood and Northwestern, after obtaining the views of representatives of Owens and Hazel-Atlas as to what the terms and scope of those license agreements should be (4598-4601, Exs. 156-158, 1630). As Assistant General Manager of Hartford he signed the feeder license agreement with Latchford Glass Company (Ex. 159).

597. Acting on behalf of Hartford, he frequently carried out Hartford's policy in granting licenses initially to manufacturers who had theretofore been in the industry, of licensing them only to manufacture the types of glassware which they had been making prior to the granting of the license, and of refusing to grant them licenses to manufacture types of ware which they had not theretofore been making (4611-12).

[fol. 13567] 598. *Alexander D. Falck* has been a director of Hartford from 1923 to date (1960). As a director of Hartford, he voted to ratify and approve (Ex. 1641) the contracts of July 1, 1932 between Hartford and Hazel-Atlas and between Hartford and Owens (Exs. 142-7), the feeder license agreement between Hartford and Knox of August 25, 1932 (Ex. 151), the feeder license agreement between

Hartford and Universal of September 15, 1932 (Ex. 154), the feeder license agreement between Hartford and General of September 16, 1932 (Ex. 1606), the Nivison-Weiskopf settlement agreement between Hartford and General of September 16, 1932 (Ex. 288) and the agreement for the acquisition of feeder patent rights between Kucera and Hartford of August 26, 1932 (Ex. 565).

599. As director of Hartford, Falck voted "to confirm and approve" (Exs. 1642-3) the contract between Ball Brothers and Hartford of March 25, 1933 (Ex. 199), and the agreements of August 23, 1933 between Hartford and Lynch (Exs. 329-30).

600. Falck was a member of a committee of the Board of Directors of Hartford which considered revisions of the contracts with Owens of July 1, 1932, and which resulted in the 1935 contracts between Hartford and Owens (Ex. 1644).

601. Falck was also a director and president of Empire Machine at least from 1915 until its dissolution in 1941 (Ex. 1929), and a director of Corning from March 1920 to date (Ex. 1930) and chairman of the Board of Directors since 1928 (1954). He was president of Corning from 1920 to 1928 (*ibid.*). As president of Empire Machine, Falck negotiated and signed the agreement of June 30, 1916 with Hartford-Fairmont (Ex. 1) and negotiated and signed the Glass Contract between Corning, Empire Machine, Hartford, and Hartford-Fairmont, as president of both Empire Machine and Corning (Ex. 19). Falck also signed the Agreement for the Formation of Hartford of October 6, 1922 (Ex. 16, p. 19), and "authorized" (Ex. 1647) the purchase from Hartford of the exclusive license under the Peiler "Punty" patent (Ex. 379, 1858), as a director of Corning.

602. *Amory Houghton* has been a director of Hartford [fol. 13568] at least since 1932. As a director he voted to ratify and approve (Ex. 1641) the July 1, 1932 contracts between Hartford and Hazel-Atlas and between Hartford and Owens (Exs. 142-7), the feeder license agreement between Hartford and Knox on August 25, 1932 (Ex. 151), the feeder license agreement between Hartford and Universal of September 15, 1932 (Ex. 154), the feeder license

agreement between Hartford and General of September 16, 1932 (Ex. 1606), and the Nivison-Weiskopf Settlement Agreement between Hartford and General of September 16, 1932 (Ex. 288), and the agreement for the acquisition of feeder patent rights between Kucera and Hartford of August 25, 1932 (Ex. 565).

603. *Amory Houghton* has been a director of Empire Machine from August 7, 1928 until its dissolution in 1941 (Ex. 1929), and a director of Corning from September 11, 1928 to date (Ex. 1930). He has also been president of Corning, at least in 1932 and 1933 (Exs. 361, 162, 167). As a director of Corning he "authorized" (Ex. 1647) the purchase from Hartford of the exclusive license under the Peiler Punty patent (Exs. 379, 1858).

604. *Arthur A. Houghton, Jr.*, has been a Director of Hartford (H-E Ans., par. 17) at least since 1933 (Ex. 1642), of Corning since 1930 (Ex. 1930), and was a Director of Empire Machine from 1938 until its dissolution in 1941 (Ex. 1929). As a Director of Hartford, he voted "to confirm and approve" (Ex. 1642) the contract between Ball Brothers and Hartford of March 25, 1933 (Ex. 199) and (Ex. 1643) the Forming Machine Agreement between Hartford and Lynch of August 25, 1933 (Ex. 330). As a Director of Corning, he voted to place "on file" (Ex. 1648) the contract between Hartford and Corning dated January 23, 1930 (Ex. 381), amending the Glass Contract (Ex. 19).

605. *William H. Curtiss* was Assistant to the President of Corning as early as April 19, 1926 (Ex. 348), vice-president of Corning from as early as October 12, 1932 to date (Ex. 362) and he has been a director of Corning since February 9, 1937 (Ex. 1930).

606. In 1929, Macbeth-Evans Glass Company, a Hartford feeder licensee, desired a Hartford license to make cus-[fol. 13569] tard cups out of ordinary glass. Curtiss, acting on behalf of Corning, informed Hartford that custard cups were ovenware and fell within Corning's exclusive field (Ex. 354). Macbeth-Evans Glass Co. did not secure the license (Exs. H-5013, H-5750).

607. McKee Glass Co., in 1931, attempted to secure from Hartford a license to use Hartford feeders in the manufacture of ovenware (Ex. 356). Curtiss, acting on behalf

of Corning, refused to allow Hartford to grant McKee a license to make such ware, on the grounds, among others, (1) that the ware fell within Corning's field, (2) that Corning had no desire to help its competitors to reduce their costs on ovenware (Ex. 357). Thereafter, McKee requested Corning to authorize Hartford to grant such a license (Ex. 359). Curtiss, acting on behalf of Corning, refused to grant McKee the license requested (Ex. 360).

608. Corning, through Curtiss, refused, in 1934 to grant Hartford the right to license Fairmont Glass Works to use heat-resistant glassware in the manufacture of insulin bottles (Ex. 363).

609. *Eugene C. Sullivan* has been a director of Corning since 1929 (Ex. 1930), and is now vice-chairman of the Board (8633). From August 1928 until February 1930 he was president of Corning (8634). He "authorized" the acceptance from Hartford of an exclusive license under the Peiler Punty Patent dated June 26, 1928 (Ex. 379.) As president of Corning, he signed the contract of January 23, 1930 (Ex. 381) which amended the original Glass Contract between Hartford and Corning (Ex. 19).

610. *J. L. Peden* has been a director of Corning since February 1938 (Ex. 1930). Acting for Corning, he participated with Curtiss and other Corning executives in opposing granting a sublicense by Corning to MacBeth-Evans Glass Co. for the manufacture of heat-resisting ware on Hartford feeders (Ex. 358), and the license was never granted. Acting for Corning, he participated in negotiations with McKee during which McKee requested a similar sublicense to make heat-resisting ware (Exs. 360, 1356, 1549-50). The license was never granted.

611. Acting for Corning, Peden refused permission to Hartford to license Indiana to use its Hartford feeders [fol. 13570] in the manufacture of heat-resistant ware (see 4712, Ex 368).

612. On March 11, 1938, Peden wrote Amory Houghton that he favored granting Anchor Hocking a sub-license to make heat-resistant ware on Hartford feeders (provided that it would agree not to make the ware for Owens) on the grounds, among others, that if the license was granted Corning (a) "could obtain a measure of control through

restrictions" over Hocking, (b) Corning would obtain some revenue from the license, and (c) the license "would help put McKee in an inferior position" (Ex. 375.) The license was never granted.

613. *Arthur L. Day* is a Director and Vice President of Empire Machine (Ex. 1929), and as a Vice President of Corning in 1919 and 1920 (8475, Ex. 7), attended a conference in August, 1919, between the representatives of Corning, Empire Machines and Hartford-Fairmont, and discussed plans for the combination (Ex. 7). He was a party to the 1922 Agreement for the Formation of Hartford (Ex. 16). At all times from January 8, 1941 (when Empire Machine was dissolved), to date, defendant Arthur L. Day has owned 20,900 shares, or approximately 4.5% of the outstanding common stock of Hartford (8484, Exs. 1583, C-5652).

614. *William E. Levis* was Vice President and General Manager of Owens from April 17, 1929 to January 14, 1930, President and a Director of Owens from January 14, 1930 until January, 1941, and Chairman of the Board of Directors of Owens from January 17, 1941 to date (2420), and a Director of Hazel-Atlas from October 31, 1933 (Ex. 955) until October 11, 1935 (Ex. 958).

615. As President of Owens, among other acts heretofore found to have been performed by him, he negotiated and signed the July 1, 1932 contracts between Owens and Hazel-Atlas, between Owens and Hartford (Exs. 142-9), the suction inventions license agreement between Owens and Lynch of August 23, 1933 (Ex. 328), and the 1935 contracts between Owens and Hartford and between Owens and Hazel-Atlas (Exs. 569, 571-2).

616. *E. F. Martin* has been Assistant Secretary of Owens since 1926 (4569). On December 5, 1934, he conferred with Safford (Ex. 1281). The parties reached an agreement that the feeder license from Hartford to Hemingray Glass Co. for insulators, which had been acquired by Owens [fol. 13571] should be renewed, and that although the insulator license was to be non-exclusive, "Hartford would first discuss with" Owens "any new licenses for insulators" which in the future Hartford might be asked to issue to others (Ex. 1281).

617. In December, 1934, Martin actively assisted Hartford in the collection of information to be used by Hartford in its suit against Swindell Bros., Inc., for infringement of Hartford's lehr patents (Exs. 764-768). As Assistant Secretary of Owens-Illinois Pacific Coast Co., a wholly owned subsidiary of Owens (O-I Ans. Pars. 212-16), Martin attested the 1935 agreements with Hartford and with Hazel-Atlas (Exs. 568-9, 572.)

618. *John H. McNerney,* was Assistant Secretary of Owens from June 1917 until the time he became Secretary, a member of the licensing committee from June 17 until 1926 (8748-9). He has been secretary at least from June 1, 1929 to date (9751, Ex. 306).

619. McNerney attested the agreement with Hartford of June 1, 1929, relating to the Whitall-Tatum Agreement of the same date (Ex. 305-6), and the 1935 contracts with Hartford (Exs. 568-71). As Secretary of Owens, he signed the minutes of the Board of Directors of Owens at which the Board (a) "authorized and directed" the proper officers of Owens to "execute and deliver" (Ex. 1650) the July 1, 1932 agreements between Owens and Hartford and between Owens and Hazel-Atlas (Exs. 144-9), and (b) "ratified and approved" (Ex. 1652) the purchase of some of the assets of the O'Neill Company (Ex. 264), the purchase of the exclusive suction license from Lynch (Exs. 1653, 328), the purchase from Hartford of an exclusive license for all the suction rights under the Headley & Thompson patents (Ex. 337), and (c) "approved and ordered to be executed and delivered" (Ex. 1654), the contracts between Hartford and Owens of September 30 and October 1, 1935 (Exs. 568-9, 578-580).

[fol. 13572] 620. *C. B. Belknap* acted as outside patent attorney for Owens from 1919 (2113) until April, 1933, when he became Vice President (2111). He became Executive Vice President and a Director of Owens in April, 1933 (*ibid.*), and from January, 1941, he has been Vice Chairman of the Board of Directors (2110).

621. At a conference with Hartford representatives in May, 1924, acting as counsel for Owens, Belknap urged that Hartford and Hamilton submit to a decree in the Hamilton suit, acknowledging that the Brookfield and Lott patents were valid and infringed (Ex. 619).

622. As counsel for Owens, Belknap negotiated with Tucker, Reeves and Beatty in an attempt to induce them to sell out to Hartford and Owens (2133-35; Ex. 717). Belknap advised that if Tucker, Reeves and Beatty exclusive licenses were outstanding at the time of acquisition, the licenses should be cut down to cover only the use of the Tucker and Reeves pressure-cut feeder to prevent such licenses from interfering with Hartford's licensing policy (Ex. 718). At the time of the acquisition, the Tucker, Reeves and Beatty licenses were assigned to Belknap (Ex. 97), who held them for the benefit of Hartford and Owens. Belknap granted an option to the Feeder Patents Company, owned by Hartford and Owens, to take over the Tucker, Reeves and Beatty licenses (Ex. 99).

623. Acting for Owens, Belknap, on March 28, 1933, recommended the acquisition of the O'Neill patents covering the stationary pot, and the O'Neill suction machine (Ex. 263—attached letter of March 28, 1933), and signed the May 6, 1933 Owens-O'Neill agreement for the acquisition of part of the assets of the O'Neill Company (Ex. 264), as Vice-President of Owens.

623a. As Vice-President of Owens, Belknap participated in the negotiations leading up to the 1933 Hartford-Owens-Lynch deal (Exs. 1750, 312, H-6053, 321, H-6055, 326), and he drafted the Lynch-Owens agreement of August 23, 1933, by which Owens obtained a license from Lynch under its suction inventions (2356; Ex. 326). As Vice-President of Owens, Belknap negotiated (Ex. 278) and signed the Hartford-Owens agreement of September 26, 1933, relating to Whitall-Tatum forming machine rights (Ex. 337).

624. As Vice-President of Owens, Belknap participated in the negotiations leading up to the 1935 revision of the Hartford-Owens agreements (2372-3).

[fol. 13573] 625. As Vice President of Owens, Belknap, at the request of Amory Houghton, President of Corning, secured a promise from I. J. Collins to refrain from commencing to manufacture heat resistant ware until he had first contacted Corning (2405-6; Ex. 372).

626. Harold Boeschenstein was Vice President of Owens from April 1929 to October 1938 (O-I Ans. Par. 20), and a director of Owens since April 1933 (ibid.). As a director he

"ratified and approved" (Ex. 1652) the purchase of some of the assets of the O'Neill Company (Ex. 264). He also "approved and ratified" (Ex. 1653) the purchase of the exclusive suction license from Lynch (Ex. 328), and the purchase from Hartford of an exclusive license for the suction rights covered by the Headley & Thompson patents, (Ex. 337).

627. As Vice President of Owens, he signed the Second Supplemental agreement with Hazel-Atlas of August 1933 (Ex. 1284).

628. As Vice President of Owens-Illinois Pacific Coast Company, he signed the General License Agreement from Owens and Owens-Illinois Pacific Coast Company to Hartford (Ex. 568), and the general license agreement from Hartford to Owens of 1935, (Ex. 569). As a director he had approved both of these contracts (Ex. 1654). He also signed the Owens and Hazel-Atlas Agreement of October 1, 1935 as Vice President of Owens-Illinois Pacific Coast Company (Ex. 572).

629. As Vice President of Owens he was active in matters relating to the possibility of excluding newcomers from entering the glassware industry (Exs. 487, 837, 865).

630. W. H. Boshart was an officer of Owens from June 16, 1908 to January 2, 1930 (O. I. Ans. par. 20), Executive Vice-President of Owens at least in 1924 (Ex. 1649), President of Owens at least from May 28, 1925 to January 14, 1930 (Ex. 79; cf. tr. 2420), and a director of Owens from November 14, 1911 to date (O. I. Ans. par. 20.)

631. As a member of a committee of the Board of Directors of Owens, he approved (Ex. 1649) the contract of April 9, 1924 between Owens and Hartford (Ex. 55), and as vice-president he signed the contract (ibid). As a director of Owens he "authorized and directed" the proper officers of Owens to "execute and deliver" (Ex. 1650) the July 1, 1932 agreements between Owens and Hartford and between [fol. 13574] Owens and Hazel-Atlas (Exs. 144-9). He "ratified and approved" (Ex. 1652) the purchase of some of the assets of the O'Neill Company (Ex. 264), the purchase of the exclusive suction license from Lynch (Exs. 1653, 328), the purchase from Hartford of an exclusive license for all the suction rights under the Headley &

Thompson patents (Ex. 337), and he "approved and ordered to be executed and delivered" (Ex. 1654) the contracts between Hartford and Owens of September 30 and October 1, 1935 (Exs. 568-9, 578-580).

632. H. E. Collin has been a director of Owens from July 23, 1926 to date (O-I Ans. Par. 20). As director of Owens he secured the option (which was later exercised for the benefit of Hartford, Owens and Lynch) to acquire the assets of Miller Machine and Mold Works (3410-11, Ex. 963). As a director of Owens, and for the benefit of Hartford and Owens, he attempted to secure control of the Amsler-Morton lehr business as heretofore found in par. 352.

633. R. H. Barnard has been a vice-president of Owens since April 16, 1930, a Director since July 12, 1935 (O-I Ans., par. 20), and is on the Planning Committee of Owens (10,244). As a Director he "approved and ordered to be executed and delivered" (Ex. 1654) the contracts between Hartford and Owens of September 30 and October 1, 1935 (Exs. 568, 9, 578-80). Barnard has been a Director of Glass Container Association since 1937 (Ex. 1713).

634. George P. Greenhalgh has been a Director of Owens since July 12, 1935 (O-I Ans., par. 20). As a Director he "approved and ordered to be executed and delivered" (Ex. 1654) the contracts between Hartford and Owens of September 30, and October 1, 1935 (Exs. 568, 9, 578-80).

635. W. W. Knight has been a Director of Owens since April 20, 1932 (O-I Ans., par. 20). As a Director he "approved" the option for the purchase of the business of the O'Neill Company and "authorized" (Ex. 1651) Levis to exercise the option on behalf of the Company (Ex. 263). He "ratified and approved" (Ex. 1652) the purchase of O'Neill Company (Ex. 264), the purchase of the exclusive suction license from Lynch (Exs. 1653, 328), the purchase from Hartford of a license for the exclusive suction rights under Headley and Thompson (Ex. 337) and he "approved and ordered to be executed and delivered" (Ex. 1654) the contracts between Hartford and Owens of September 30 [fol. 13575] and October 1, 1935 (Exs. 568-9, 578-580).

636. *F. H. McAdoo* was a Director of Owens from April 1926 until July 1931, and from April 17, 1935 until the present (O-I Ans., par. 20). As a Director of Owens, he "approved and ordered to be executed and delivered" (Ex.

1654) the contracts between Hartford and Owens of September 30 and October 1, 1935 (Exs. 568-9; 578-80).

637. *C. J. Root* arranged for the purchase by Owens on September 16, 1932, of Root Glass Company, of which he was president (2498-9), and on that date he became a director of Owens (O-1 Ans., par. 20). Root attended a meeting with Levis, McNash, I. J. Collins, and others, at White Sulphur Springs in 1932, at which meeting, Levis, Root and McNash urged I. J. Collins to surrender General's Hartford feeder license to manufacture fruit jars (2739). As a director of Owens, Root "approved and ordered to be executed and delivered" (Ex. 1654) the contracts between Hartford and Owens of September 30th and October 1, 1935 (Exs. 568, 9; 578-80).

638. *F. W. Schwenck* has been a director of Owens since April 18, 1928 (O1I Ans., par. 20). He signed the 1924 Owens-Hartford agreement (Ex. 55) as President of Boldt Glass Co. As a Director of Owens he "authorized and directed" the proper officers of Owens to "execute and deliver" (Ex. 1650) the July 1, 1932 agreements between Owens and Hartford and between Owens and Hazel-Atlas (Exs. 144-9); he "authorized" (Ex. 1651) Levis to exercise the O'Neill option on behalf of the company (Ex. 263), "ratified and approved" (Ex. 1652) the purchase of The O'Neill Company (Ex. 264), the purchase of the exclusive suction license from Lynch (Exs. 1653, 328), the purchase from Hartford of an exclusive license for all the suction rights under the Headley & Thompson patents (Ex. 337), and "approved and ordered to be executed and delivered" (Ex. 1654) the contracts between Hartford and Owens of September 30 and October 1, 1935 (Exs. 568-9, 578-80).

[fol. 13576] 639. *J. Harrison McNash* has been a director *and* president of Hazel-Atlas from 1924 to date (3051). As president of Hazel-Atlas, among other acts heretofore *found* to have been performed by him, he negotiated and signed the July 1, 1932 contracts between Hazel-Atlas and Hartford and between Hazel-Atlas and Owens, and all amendments thereto and substitutions therefor (Exs. 142-3, 148-9, 170, 1284, 572-3).

640. *Walter H. McClure* is Vice President and General Sales Manager (3268; Ex. 948), and since October 3, 1933, he has been a Director of Hazel-Atlas (Ex. 955). He has

been a Director of Glass Container Association since 1925 and President since 1932 (4988-9; Ex. 1713).. On January 4, 1933, he attended a meeting with Owens, General and Capstan, to discuss the situation with respect to the manufacture of beer bottles by Hartford licensees (2562-4; Ex. 800).

641. On May 15, 1933 he wrote McNash, complaining against the manufacture of fruit jars by Three Rivers in violation of their license agreement with Hartford (3268; Ex. 948).

642. On June 22, 1933, he wrote Eldred that Rieman had told him that Capstan proposed to sell fruit jars (Ex. 950). McClure described this information as "very astonishing and, if true, very disconcerting" and requested Eldred to state whether Capstan had a feeder license from Hartford to make fruit jars (*ibid.*).

643. *George S. Quay* has been Secretary of Hazel-Atlas at least since July 1, 1932, and a director since 1935 (2694-5, Ex. 142). As Secretary he attested each of the contracts between Hazel-Atlas and Hartford and between Hazel-Atlas and Owens, all dated July 1, 1932 (Exs. 142-3, 148-9). He was elected director to fill the place left vacant by W. E. Levis, "with the understanding" that he would be representing Illinois and that W. E. Levis would receive through him the same type of information that Levis had been receiving as a Director of Hazel-Atlas (Ex. 827). Following the dissolution of Illinois in 1938, Quay continued to represent those individuals who had been stockholders of Illinois and who received Hazel-Atlas stock (2694-2703).

644. *L. C. Paull, H. W. Gee, William W. Holloway and B. H. Seabright* have each been Directors of Hazel-Atlas (H-A Ans. par. 21). As Directors, Paull, Gee and Hollo-[fol. 13577] way "instructed" (Ex. 1655) McNash and Quay, to sign the contracts with Owens and with Hartford, of July 1, 1932 (Exs. 142-3; 148-9), and "ratified, approved and confirmed (Ex. 1656). The action of McNash and Quay in signing them (Ex. 1656). As Directors, Gee, Holloway and Seabright voted to empower and instruct the proper officer of Hazel-Atlas to sign (Ex. 1657) the agreement of October 3, 1935, between Owens and Hazel, and of September 29, 1935, between Hartford and Hazel (Exs. 572-3).

645. *H. C. Mandeville* has been chairman of the Board of Directors of Thatcher at least since 1928 (Ex. 1245). As chairman he approved of the action of Hartford in granting Buck Glass Company, Knox, Lamb, and Universal Glass Products Co. feeder licenses to produce milk bottles in limited amounts in order to stabilize the price at which milk bottles were sold (Exs. 431, 1153, 1161, 783). As chairman, he negotiated the acquisition of the milk bottle businesses of Knox and Peerless (Exs. 242, 244, 1833, 1849).

646. *R. W. Niver* as President of Thatcher, signed the Consolidated Agreement with Hartford of April 13, 1928 (Ex. 240), the General Agreement with Hartford of January 1, 1926 (Ex. 248); the agreement with Knox of December 5, 1932 (Ex. 242); the agreement with Hartford with respect to Magle lehrs (Ex. H-5321), and the agreement between Thatcher, Hocking and Hartford of February, 1931, providing for the organization of the Thatcher-Hocking Company (later known as General Glass Corp.) (Ex. 1140). As a director of General, Niver "approved" "all contracts entered into and acts of Officers in behalf of" General from time of its organization in 1931 until April 11, 1933 (Exs. 1666-7).

647. *E. F. Wellinghoff* has been Vice President in charge of sales of Thatcher since August 1927 (4835). On April 7, 1932, Wellinghoff wrote J. T. & A. Hamilton Company, warning that company that Owens was complaining "regarding prices you are quoting in the Pittsburgh district", and Wellinghoff solicited an explanation (Ex. 1337).

648. On August 10, 1932, Wellinghoff wrote General that he had consulted the Glass Container Association concerning the rumor that Knox was offering to sell gallon jugs at prices lower than those of General and that he had re- [fol. 13578] ceived a written reply from the Association which he enclosed, with the request that the reply be destroyed (Ex. 1338).

649. *Jervis Langdon, S. G. H. Turner and F. H. Swan* have each been Directors of Thatcher (Thatcher Ans., par. 13). As directors, they "authorized" (Ex. 1661) the execution of the contract between Thatcher and Knox providing for the purchase of the milk bottle business and Hartford license rights of Knox (Ex. 242). Langdon and Swan were also present at a directors' meeting when the contract of

February 11, 1931, between Thatcher, Hartford and Hocking (Ex. 1140) regarding the organization of Thatcher-Hocking Company (subsequently called General Glass Corporation) was read (Ex. 1662).

650. *W. H. Mandeville* is Vice-President of Olean Glass Company (2509), a wholly-owned subsidiary of Thatcher (2508), and has been a Director of Thatcher (2720) since 1936 (Ex. 834). As a Director he represented the stock interests of Illinois in Thatcher and kept "in contact" with Levis "regarding the situation" (2719-20, Ex. 834). In 1931, he purchased the assets of Turner at the Receiver's sale, for General (4064-5).

651. *Stanton Griffis* was a Director of Thatcher from at least September, 1928, until January 1, 1941 (5408, 5412, 6358). In July 1930, Mandeville wrote Stanton Griffis that Thatcher "cannot correct prices until we get the Turner Company under control" (Ex. 1843). To get Turner under control Mandeville proposed to give Hartley, President of Turner, a block of Thatcher common stock (*ibid.*). Shortly thereafter, Hartley was invited by Mandeville and Griffis to Griffis' yacht where Mandeville and Griffis offered him 20,000 shares of Thatcher stock to "send the Turner Glass Company through the wringer" (5436). After General was formed to take over Turner, Griffis was elected Director of that company (Ex. 1666), and he attended a Directors meeting in April 1933 at which all of the General's contracts were "approved" (Exs. 1666-7).

[fol. 13579] 652. *Thomas Chandler Werbe* has been president of Lynch from 1929 or prior thereto, to date (3684; Ex. 1009). As President of Lynch among other acts heretofore found to have been performed he negotiated and signed the agreement to purchase the assets of Miller Machine and Mold Works (Ex. 327) and the agreements of August 23, 1933 with Hartford and with Owens (Exs. 328-30).

653. *B. G. Bridges* has been director of Lynch at least since 1933. (Ex. 1120). He actively participated in the negotiations with Hartford leading to the Forming Machine Agreement of August 25, 1933, between Hartford and Lynch (Exs. 330, 1120, H-6048). As a director of Lynch he "ratified, confirmed and approved" (Ex. 1659) the agreement of August 23, 1933 between Lynch and Hartford and between Lynch and Owens (Exs. 328-30), and the contract

to purchase the assets of Miller Machine and Mold Works of August 21, 1933 (Ex. 327).

654. *Uz McMurtrie* was a business finder and negotiator who with defendants Collin and Levis, arranged for the acquisition by Lynch of its competitor, Miller Machine & Mold Works, for which he received fifty thousand dollars from Lynch (Ex. 1033). McMurtrie also aided Lynch in its purchase by buying 2,500 shares of the additional Lynch stock (Ex. LC-5095). Subsequently he became a member of the Board of Directors of Lynch, which position he still holds (Lynch Answer, Par. 11). McMurtrie and Bridges, as representatives of Lynch, attended a conference on July 8, 1933 with representatives of Hartford, at which the proposed agreements with Hartford and Owens were discussed (Ex. H-6048), and he "outlined the present attitude" of Lynch to be that "all parties agree that it is desirable to corner the forming machine business" (*ibid.*).

655. *A. G. Doll* was and is a Vice President of Lynch (Lynch Ans. par. 11, Ex. 1103). He assisted Hartford to keep American Glass Mfg. Co., a newcomer, out of the industry (Exs. 1090, 1099; see also Exs. 1087-1092, 1098, 1103, [fol. 13580] 1104). As Vice President he carried out the terms of the Forming Machine Agreement (Ex. 330) by not accepting orders for Lynch forming machines if not assured that Hartford would issue a forming machine license to the prospective purchaser (Exs. 1096-7, 1100-1).

656. *N. H. McCullough* is a director of Lynch (Lynch Ans. par. 11). He "ratified, combined and approved" (Ex. 1659), the acquisition by Lynch of the Miller assets (Ex. 327), the Forming Machine Agreement (Ex. 330), the license agreement with Owens (Ex. 328) and the license agreement with Hartford (Ex. 329).

657. *J. L. Watts* is a director and officer of Lynch (Lynch Ans. par. 11). He "authorized" (Ex. 1120) Lynch to acquire the Miller assets (Ex. 327), to enter into the "Forming Machine Agreement" with Hartford (Ex. 330), and to enter into the license agreement with Owens (Ex. 328).

658. *Frank C. Ball* has been president of Ball Brothers or its predecessors at least from 1901 to date (6400), and *George A. Ball* has been an officer of Ball Brothers or its predecessors since 1882 (4239). Both Frank C. Ball and

George A. Ball are and have been directors of Ball Brothers from at least March 25, 1933 (Ex. 1658, B. B. Ans. par. 8).

659. Both Frank C. Ball and George A. Ball negotiated, among others, the March 25, 1933 agreement between Ball Bros. and Hartford (Ex. 199), and F. C. Ball signed that agreement as president of Ball Bros., as well as the agreement of March 23, 1933 with Knox and its president (Ex. 196). Both Frank Ball and George A. Ball, as Director of Ball Brothers, "ratified and confirmed" (Ex. 1658) the aforesaid contracts with Hartford and with Knox and its president, as well as the contract of April 27, 1933, between Ball Brothers and Brockway and its President (Ex. 200).

660. *W. H. Ball* and *Edmund F. Ball* have each been Directors of Ball Bros .at least since March 25, 1933. (Ball Bros. Ans., par. 8, Ex. 658). Each "ratified and confirmed" [fol. 13581] (Ex. 1658) the agreement of March 25, 1933, with Hartford (Ex. 199); the contract of March 23, 1933, with Knox and its president (Ex. 196); and the contract of April 27, 1933, with Brockway and its president (Ex. 200). W. H. Ball also signed this last mentioned agreement as secretary of Ball Brothers.

661. *Fred J. Petty* has been a Director of Glass Container Association since 1936, and of Ball Brothers since September 21, 1935, both of which positions he still holds (Ex. 1713, B.B. Ans., Par. 8). From January 7, 1930, until sometime in 1940, he was Assistant Secretary of Ball Brothers and since then has been Secretary (10429, B.B. Ans., Par. 8). As Assistant Secretary, he attended the March 25, 1933 agreement between Ball and Hartford (Ex. 199). As Secretary, he attended the August 1, 1940 amendment to this agreement (Ex. H-5026) which contained the Corning field exclusions.

662. *Charles R. Stevenson,* as business manager of the Glass Container Association from 1928 to date, and *Emory C. Ackerman,* as assistant business manager of the Association from 1928 to 1941, have carried out the policy of the Association and performed the acts in the enforcement thereof, heretofore found to have been formulated and performed by the Association in paragraphs 490 to 506, inclusive.

663. *Isaac J. Collins* was president of Hocking at all times since its organization in 1905 until 1938 (4014). He has been president of Anchor Hocking from 1938 to date. He was a director of Hartford from May 4, 1926 until February 1938 (4027-8, 1582). He was president and director of General from 1931 to 1937 (Ex. 313). He has been on the Statistical Committee of the Glass Container Association from 1931 to date (Ex. 1714).

664. Collins, as a director of Hartford in May 1932, participated in a discussion of plans of the Board of Directors of Hartford to induce Hazel-Atlas to form a partnership with Hartford and Owens (Ex. 2005; See Exs. 1154, 1161).

665. As a stockholder of Hartford he now owns and has owned for some years, 10,000 shares of the common stock of Hartford (Ex. 1503).

[fol. 13582] 666. As President of General and while a director of Hartford, Collins (1) negotiated the settlement with Hartford of its claims for infringement damages against Nivison-Weiskopf (Exs. 288, 314, 1142); and (2) with the presidents of Owens, Hazel-Atlas and Hartford, he negotiated the transaction by which General surrendered its fruit jar license rights in exchange for $100,000 (2739-40; Exs. 198, 178, 1162).

667. As president and a director of Hocking, Collins (1) arranged and "authorized" (Ex. 1663) the agreement of February 11, 1931 between Hocking, Thatcher and Hartford which provided for the organization of General (Ex. 1140); and (2) negotiated with defendant Levis (president of Owens and of Illinois) and with officials of Anchor Cap Corp. for the combination of the Anchor Cap Corp. with Hocking and for the purchase of some of the stock of the new company by Illinois, in order to reduce competition and achieve stability in the production and distribution of glassware (2420, 2852-3, 2842-3, 2852, 2859-71, 4050-1, 4208, 4168-9, Exs. 1140, 851-2, 275, 1665, AH-5129).

668. *T. C. Fulton* was one of the original organizers of Hocking in 1905 and thereafter he was secretary-treasurer, and a director of Hocking (Ex. 1663). He held the same titles in General from 1931 to 1938 (Ex. 313).

669. As a director of Hocking, he (1) "authorized" (Ex. 1663) the agreement of February 11, 1931 between Hock-

ing, Thatcher, and Hartford which provided for the organization of General (Ex. 1140), and (2) "authorized" I. J. Collins to execute offers to Illinois Glass Company and Allied Chemical & Dye Company to purchase the common stock of Hocking (Ex. 1665), and "ratified, confirmed, and approved" (*ibid.*) the agreement providing for the sale of the assets of Hocking to the Anchor Cap Corp., and "authorized" (*ibid.*) defendant Collins to approve and execute such changes and amendments of that agreement as were necessary (*ibid.*). As an officer and director of Hocking, Fulton negotiated with defendant Levis (president of Owens and of Illinois) and with officials of Anchor Cap Corp. for the combination of Anchor Cap Corp. with Hocking and for the purchase of some of the stock of the [fol. 13583] new company by Illinois, in order to reduce competition and achieve stability in the production and distribution of glassware (2420, 2862-3, 2842-3, 2852, 2859-71, 4050-1, 4208, 4168-9, Exs. 1140, 851-2, 275, 1665, AH-5129).

670. As a stockholder of Hartford, Fulton now owns and has owned for some time at least 3600 shares of the common stock of Hartford (Ex. 1583).

671. *W. V. Fisher* is Vice President and General Manager of Anchor Hocking (4194). As a director of Hocking he "authorized" the agreement of February 11, 1931, between Hocking, Thatcher and Hartford which provided for the organization of General (Exs. 1140, 1663). He took part in the negotiations with defendant Levis which led to the purchase by Illinois and Allied Chemical & Dye Co. of the common stock of Hocking (4170). As a director, he "authorized" defendant Collins to execute offers to Illinois and Allied Chemical & Dye Company to purchase the common stock of Hocking. As a director, he "ratified, confirmed and approved" the agreement providing for the sale of the assets of Hocking to Anchor, and "authorized" defendant Collins to approve and execute such changes and amendments of said agreement as were necessary (Ex. 1665). On July 16, 1940, he executed on behalf of Anchor Hocking a renewal of General's license with Hartford (Ex. 1606). He now owns and has owned for some years at least 450 shares of the common stock of Hartford (Ex. 1583).

672. *G. F. Rieman* was president of Capstan from 1920 until January 1, 1937 (2544-5), vice president and a di-

rector of Anchor Hocking from January 1, 1938 until August 1939. He became assistant vice president of Ball Brothers thereafter, which position he still holds (2546-7).

673. In 1931, Rieman complained about Hartford's inability to control "outsiders" (Ex. 1861), and in 1933 he agreed "to cooperate" with Hartford in "extending" its "control" so long as it would work to Capstan's advantage (Exs. 801, 1847, 475). Accordingly, Rieman surrendered control to Hartford of the Capstan feeder, in return for a license to make beers (2575, Exs. 804-6).

674. Rieman, as president of Capstan, and as a member [fol. 13584] of the Statistical Committee of the Association (Ex. 1714), was influenced after 1934 by the quotas of the Glass Container Association, which he considered binding upon his company (Exs. 809-811).

675. *J. D. Dilworth* was Vice-President and Director of Anchor Cap Corporation (2618). He "authorized" the contract providing for the acquisition of Hocking's assets by Anchor (Ex. 1668). In 1937, he executed a feeder license agreement between Salem and Hartford (Ex. 1607).

675a. As a stockholder of Hartford-Fairmont, Dilworth signed the Agreement for the Formation of Hartford-Empire Company (Ex. 16). He now owns and has owned for some years, 8235 shares of the common stock of Hartford (Ex. 1583).

676. *C. D. King* was Sales Manager of Turner (5409). He was also a director of Monongah and as such, moved that the board of directors sell the Hartford stock which it owned, to Nelson Rodgers, Inc., at $35 per share (Exs. H-5307, AH-5314). King subsequently became sales manager of General (4285, 4840), and thereafter became an officer of Anchor Hocking (A-H Ans. par. 25), which position he still holds (4840). As sales manager of General he was careful, according to Eldred, Vice-President and General Manager of Hartford, "to avoid every possibility of inadvertently furnishing household fruit jars" (5230-1; Ex. 1193; see also 1192) in violation of General's license agreement with Hartford (Ex. 1606).

677. *H. C. Laughlin* became Secretary of Anchor Hocking sometime prior to September 19, 1938 (Ex. 1825). He also was Secretary of Anchor Hocking of Pennsylvania (for-

merly called Capstan) (Ex. 1177). As Secretary of Anchor Hocking, on September 19, 1938, he tried to arrange a meeting with representatives of Hartford (Ex. 1825) "to check over the whole Hartford-Anchor Hocking license situation with the thought" that it might be possible to work out some consolidation of agreements which would be "beneficial to both parties."

678. As Secretary of one or both of these corporations, on April 25, 1939, he directed the procedure by which Anchor [fol. 13585] Hocking of Pennsylvania was to manufacture fruit jars on Tucker and Reeves feeders in such manner as to remain as nearly as possible within the provisions of the Capstan-Hartford agreement of February 17, 1926 (Exs. 808, 1827). On May 1, 1939 he addressed a letter agreement to Hartford to serve as an amendment of Hartford license agreements for the purpose of permitting Anchor Hocking to sublease certain Hartford equipment to Anchor Hocking *to sublease certain Hartford equipment to Anchor Hocking* of Pennsylvania in connection with the new proposed procedure (Ex. 1828). Hartford approved this agreement (6295). As Secretary of Anchor Hocking of Pennsylvania, on August 29, 1939, Laughlin made arrangements with Hartford under which production was reported by Anchor Hocking of Pennsylvania to Hartford for the purpose of royalty payments under said agreement of February 17, 1926 (Ex. 1177).

679. *Ernest Stauffen, Jr.* was a director of Anchor Cap Corp. (4169) and is now a director of Anchor Hocking (4201). He participated directly in the negotiations with defendants Collins and Levis which led to the purchase of the assets of Hocking by Anchor Cap Corp. (4169), and specifically "authorized" the contract of purchase on behalf of Anchor Cap Corp. (Ex. 1668).

680. *B. H. Factor* was a director and assistant secretary of Hocking (Ex. 1665) and became an officer or director of Anchor Hocking (A-H Ans., Par. 25). As a director, he "ratified, confirmed and approved" the agreement providing for the sale of Hocking's assets to Anchor and "authorized" defendant Collins to approve and execute such changes and amendments of said agreement as he should deem to be for the best interests of Hocking (Ex. 1665). As a director, he "authorized" defendant Collins to execute offers to Illi-

nois Glass and Allied Chemical & Dye Co., respectively, to purchase 10,000 shares of Hocking stock (Ex. 1665).

681. *R. L. Davidson* is Vice-President and a Director of Liberty (Liberty Ans. par. 6). He participated in the negotiations with Hartford as a result of which Hartford brought [fol. 13586] suit against Knape-Coleman (Ex. 733). He signed, in behalf of Liberty, amendments of February 13, 1936, and May 11, 1936, to Liberty's license agreement with Hartford (Ex. 1632).

Respectfully submitted, Thurman Arnold, Assistant Attorney General. Samuel S. Isseks, Lawrence S. Apsey, Special Assistants to the Attorney General. Victor H. Kramer, Seymour D. Lewis, Frank Shields, Special Attorneys.

July 18, 1942.

I have on this day caused copies of the above to be delivered to Counsel for the defendants.

(Signed) Seymour D. Lewis.

[fol. 13587] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PLAINTIFF'S PROPOSED CONCLUSIONS OF LAW—Filed July 18, 1942

I. *Jurisdiction*

1. The Court has jurisdiction of this cause under the provisions of the Act of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", commonly known as the Sherman Act, and under the provisions of the Act of October 15, 1914, commonly known as the Clayton Act. Each of the corporate defendants herein, except defendants Empire Machine and Glass Container Association, is and has been engaged in trade and commerce among the several States. Each of the defendants is a party to a combination or conspiracy in restraint of trade and commerce among the several States.

II. *Overall Conclusions*

2. Every act in furtherance of a general plan to restrain trade and commerce among the several States, or to monopolize or attempt to monopolize any part thereof, in violation of the anti-trust law, is illegal regardless of its legality when standing alone. Wherever trade and commerce is referred to in those conclusions of law, it is intended to refer to trade and commerce among the several States.

3. The defendants have violated and are now violating [fol. 13588] Section 1 of the Sherman Act by unlawfully contracting, conspiring and combining to restrain trade in, through the use of patents, (a) machines for the manufacture and distribution of glassware, (b) the manufacture and distribution of glassware, (c) the manufacture and distribution of non-container ware, and more particularly the manufacture and distribution of bulbs, signal and optical ware, heat resistant and chemical resistant ware, ovenware, and tubing and cane, (d) the manufacture and distribution of milk bottles, and (e) the manufacture and distribution of fruit jars.

4. The defendants have violated, and are now violating, Section 2 of the Sherman Act by unlawfully conspiring, monopolizing, and attempting to monopolize, and by acquiring and maintaining monopolies of (a) patents covering inventions embodied in glassmaking machinery, (b) the manufacture, distribution and licensing of glassmaking machinery, and (c) the manufacture, distribution and sale of glassware, and more particularly the manufacture and distribution of bulbs, signal and optical ware, heat resistant and chemical resistant ware, ovenware, and tubing and cane, (d) the manufacture and distribution of milk bottles, and (e) the manufacture and distribution of fruit jars, and by excluding others from the fair opportunity to engage freely and unrestrictedly in trade and commerce in said machinery and glassware.

III. *Combinations to Obtain the Issuance of Controlling Patents.*

5. An agreement or arrangement between a manufacturer and distributor of automatic machinery used in the manufacture of unpatented glassware and another party in interference with such manufacturer in the Patent Office, to ob-

tain patents which would control the manufacture of such automatic machinery in order to dominate and control the distribution of automatic machinery and unpatented glassware made thereon, constitutes a conspiracy, combination or [fol. 13589] contract in restraint of trade in violation of Sections 1 and 2 of the Sherman Act.

6. An agreement or arrangement between a manufacturer and distributor of automatic machinery used in the manufacture of unpatented glassware and another party in interference with such manufacturer in the Patent Office, which provides that the parties will arrange the claims in pending applications in the Patent Office so as to permit patents to issue which will permit the manufacturer of automatic machinery to dominate and control such machinery and unpatented glassware, on the understanding that the parties will share in the proceeds of royalties collected from those using the inventions covered by the issued patents, such royalties being determined by the amount of unpatented glassware made on the machinery, constitutes a conspiracy, combination or contract in restraint of trade, in violation of Sections 1 and 2 of the Sherman Act.

7. The purchase by a manufacturer and distributor of automatic machinery used in the manufacture of unpatented glassware and the largest manufacturer of unpatented glassware in the United States, (which manufacturer also controlled the manufacture, distribution and use of an alternative type of automatic machinery used in the manufacture of unpatented glassware) at a time when both manufacturers had an agreement for the sharing of royalties collected or to be collected by the first manufacturer under existing or future patents, of the applications and patents of a company or companies competitively engaged in the manufacture and distribution of automatic machinery for the making of unpatented glassware in order to terminate interferences between the first manufacturer and those other companies for the purpose of causing patents dominating and controlling such automatic machinery to be issued to the first manufacturer of such automatic machinery, constitutes a violation of Sections 1 and 2 of the Sherman Act.

[fol. 13590] 8. Where a manufacturer and distributor of automatic machinery used in the manufacture of unpatented glassware has combined and conspired with leading glass-

ware manufacturers to monopolize trade and commerce in automatic glassmaking machinery and unpatented glassware through and by the procuring of patent rights ostensibly resulting from an agreement to submit to arbitration their rival claims of priority of invention in interference in the Patent Office, but actually carried out by negotiation and the allocation of claims so as to make the patents come out in the strongest way for the interests of the conspirators, it is a violation of Sections 1 and 2 of the Sherman Act.

9. Where a manufacturer and distributor of automatic machinery used in the manufacture of unpatented glassware has combined and conspired with leading glassware manufacturers to monopolize trade and commerce in automatic glassmaking machinery and unpatented glassware through and by the procuring of patent rights, the procuring of an affidavit by a rival claimant in interference in the Patent Office, indicating that such claimant's alleged prior use of the invention was a secret use or abandoned experiment, and thereupon submitting such affidavit to an arbitrator for determination as to priority between the claim of the conspirators and said rival claim, it is an illegal means of carrying out a plan to build up a patent structure, in violation of Sections 1 and 2 of the Sherman Act.

10. The simultaneous prosecution of several interferences in the Patent Office in the names of different inventors whose inventions are all controlled by concerns acting in combination for the purpose of building up a patent structure to dominate and control automatic machinery used in the manufacture of glassware and unpatented glassware, and for the purpose of harassing and preventing their competitors from obtaining patents, is a violation of Sections 1 and 2 of the Sherman Act.

[fol. 13591] 11. Concerted action in the Patent Office for the transferring of conflicting claims from one patent application to another and determination of priority between patents by negotiation rather than by contest in the Patent Office, or by genuine arbitration proceedings, is a violation of Sections 1 and 2 of the Sherman Act when effectuated by a combination of concerns for the purpose of building up a patent structure to dominate and control automatic machinery used in the manufacture of glassware and unpat-

ented glassware, and for the purpose of harassing and preventing their competitors from obtaining patents.

12. Concerted action to conceal from the Patent Office facts bearing on the priority of applications in interference, when carried out by a manufacturer and distributor of automatic machinery used in the manufacture of unpatented glassware in combination with the leading manufacturer of such glassware, in pursuance of a plan to build up a patent structure to dominate and control the automatic glassware machinery and glassware industries, is an illegal means of carrying out such plan, in violation of Sections 1 and 2 of the Sherman Act.

13. Concerted action for the purpose, and with the effect of keeping applications in the Patent Office for unreasonably long periods of time, when carried out by a manufacturer and distributor of automatic machinery used in the manufacture of unpatented glassware in combination with the leading manufacturer of such glassware, for the purpose of building up a patent situation to dominate and control automatic machinery used in the manufacture of glassware and unpatented glassware, and for the purpose of harassing their competitors and preventing them from obtaining patents, is a violation of Sections 1 and 2 of the Sherman Act.

14. The deliberate and intentional pursuit, in pursuance of a plan to build up a patent structure to dominate and [fol. 13592] control an industry, of a policy of taking out patents for the purpose of blocking off or fencing in the inventions and developments of competitors, and without any attempt to make commercial use of the inventions covered by such patents, is a violation of Sections 1 and 2 of the Sherman Act.

15. Where a manufacturer and distributor of automatic machinery used in the manufacture of unpatented glassware has combined and conspired with leading glassware manufacturers to build up a patent structure for the purpose of controlling and monopolizing glassmaking machinery and unpatented glassware, the fact that the acts of such conspirators in eliminating competition were performed in the exertion of the patent rights acquired pursuant to the conspiracy, is no defense to a charge of violation

of the antitrust laws, even if the patents in question are valid and infringed.

16. The fact that such conspirators, in bringing infringement suits, believed that their patents were valid, dominant and infringed, is no justification for the bringing of infringement suits also motivated by a desire to further the ends of the conspiracy by eliminating competition in machinery or glassware, monopolizing trade and commerce in automatic glassmaking machinery, and stabilizing the price of unpatented glassware.

16a. Where combining patent owners effectively dominate the automatic glassmaking machinery industry, their power to fix and maintain royalties for the use of inventions controlling such automatic machinery used in the manufacture of glassware is tantamount to the power to fix the prices of such glassware and violates Sections 1 and 2 of the Sherman Act.

[fol. 13593] IV. *Acquisition of Patents and Competing Businesses to Eliminate Competition and to Control Automatic Machinery for the Production of Glassware*

17. The acquisition by a leading manufacturer and distributor of automatic machinery used in the manufacture of unpatented glassware of the applications for patents, patents, and business of another major company similarly and competitively engaged in the manufacture and distribution of automatic machinery for making unpatented glassware, constitutes a violation of Sections 1 and 2 of the Sherman Act.

18. The purchase by a leading manufacturer and distributor of automatic machinery used in the manufacture of unpatented glassware and the largest manufacturer of unpatented glassware in the United States (which manufacturer also controlled the manufacture, distribution and use of an alternative type of automatic machinery used in the manufacture of unpatented glassware) at a time when both manufacturers had an agreement for the sharing of royalties collected or to be collected by the first manufacturer under existing or future patents, of the applications and patents of a major company or companies competitively engaged in the manufacture and distribution of automatic machinery for the making of unpatented glassware,

constitutes a violation of Sections 1 and 2 of the Sherman Act.

19. The acquisition by a manufacturer and distributor of automatic machinery used in the manufacture of unpatented glassware, of all or practically all patents and applications covering inventions embodied in such automatic machinery, as well as rights (such as exclusive and non-exclusive licenses) from other manufacturers of such automatic machinery and manufacturers of unpatented glassware, for the purpose of obtaining and maintaining domination and control of such automatic machinery and unpatented glassware, constitutes a violation of Sections 1 and 2 of the Sherman Act.

19a. The acquisition by the largest manufacturer of glassware using principally automatic machinery developed by itself for the production of glassware, of all or practically all patent rights and applications covering inven- [fol. 13594] tions embodied in such automatic machinery, including improvements thereon, as well as rights (such as exclusive and non-exclusive licenses) from other manufacturers of automatic machinery for making glassware and manufacturers of glassware, for the purpose of obtaining and maintaining domination and control of such automatic machinery and unpatented glassware constitutes a violation of Section 1 of the Sherman Act.

20. The acquisition by a manufacturer and distributor of automatic machinery used in the manufacture of unpatented glassware, of the applications for patents, patents and business of a company similarly and competitively engaged in the manufacture and distribution of such automatic machinery, for the purpose of obtaining patents from the Patent Office which would dominate and control the manufacture of such automatic machinery and such unpatented glassware, constitutes a violation of Sections 1 and 2 of the Sherman Act.

21. A combination between a manufacturer and distributor of automatic machinery used in the manufacture of unpatented glassware, and the leading manufacturer of such glassware, for the purpose and with the effect of inducing the leading manufacturer and distributor of automatic forming machines used primarily in the manufacture of

narrow-neck ware to acquire the competing business of the leading manufacturer and distributor of forming machines used in the manufacture of wide-mouth ware, is a violation of Sections 1 and 2 of the Sherman Act, where the narrow-neck machines are used to a substantial extent in the manufacture of widemouth ware, and the manufacturer of forming machines for widemouth ware also manufactures and [fol. 13595] distributes some narrow-neck forming machines.

21a. Where the principal manufacturer of a particular type of unpatented glassware acquires an exclusive license to use all outstanding patent rights covering the only commercially practicable method of manufacturing such type of glassware, and also acquires the competing businesses of others engaged in the manufacture of that particular type of glassware, in order to monopolize the manufacture and distribution of said type of glassware, it is a violation of Sections 1 and 2 of the Sherman Act.

V. *Settlement of Patent Disputes by Combination or Restrictive Cross-Licensing*

22. Where major competing manufacturers of glassmaking machinery are engaged in patent litigation, patent interferences, or in disputes as to pending claims, and there is available the method of settling such controversies by an exchange of non-exclusive, unrestricted, cross-licenses, the settlement of such controversies through the acquisition by one party of the patents or applications of the other, or by an exchange of licenses disabling any party from the full enjoyment of the use of the inventions covered by his own applications or patents, violates Section 1 of the Sherman Act.

23. An agreement or understanding to settle or compromise pending patent litigation, patent interferences, or pending claims, between a manufacturer and distributor of automatic machinery used in the manufacture of unpatented glassware and a company engaged primarily in the [fol. 13596] manufacture of unpatented glassware (but which company makes its own automatic machinery and potentially is a competitor in the manufacture of automatic machinery), for the purpose of placing, maintaining or continuing domination and control in the manufacturer and

distributor of automatic machinery with an arrangement for the sharing of all royalties collected by such manufacturer of automatic machinery between the parties to the agreement of settlement, constitutes a violation of Sections 1 and 2 of the Sherman Act.

24. An agreement or understanding to settle or compromise pending patent litigation, patent interferences, or pending claims, between a manufacturer of automatic machinery used in the manufacture of unpatented glassware, and a company engaged primarily in the manufacture of unpatented glassware (but which company makes its own automatic machinery and potentially is a competitor in the manufacture of automatic machinery), for the purpose of placing, maintaining or continuing domination or control in the manufacturer and distributor of automatic machinery with an arrangement for the sharing of all royalties collected by such manufacturer of automatic machinery between the parties to the agreement of settlement, to the competitive disadvantage of other manufacturers of glassware, constitutes a violation of Sections 1 and 2 of the Sherman Act.

VI. *Monopolization of Licensing*

25. The carrying out of a deliberate and long-continued plan by a manufacturer and distributor of automatic machinery used in the manufacture of unpatented glassware, to obtain exclusive control of the distribution and licensing of methods and equipment applicable to the entire art of fabricating glassware, including the furnace link, the melting link, the feeding link, the forming link, and the annealing link, is an attempt to monopolize in violation of Section 2 of the Sherman Act.

26. The attempt to effectuate a plan, through the acquisition and use of patents, to obtain in one hand the control [fol. 13597] of the licensing of all equipment used in the manufacture of glassware from molten glass (such as feeders, forming machines, stackers and lehrs), with a view to offering all of such equipment to manufacturers for a single royalty in such a manner that manufacturers cannot obtain one or more of the machines essential to such process from any other source, is an attempt to monopolize in violation of Section 2 of the Sherman Act.

27. A combination between a manufacturer and distributor of automatic feeders and forming machines used in the manufacture of unpatented glassware, with a manufacturer and distributor of automatic forming machines used primarily in the manufacture of narrow-neck ware, and another manufacturer and distributor of forming machines used primarily in the manufacture of widemouth ware, and with the leading manufacturer of unpatented glassware, for the purpose of getting the licensing of forming machines into a single hand and thereby strengthening the monopoly of feeders in the hands of the first of said manufacturers, is a violation of Sections 1 and 2 of the Sherman Act.

28. If a manufacturer and distributor of automatic feeders and forming machines used in the manufacture of unpatented glassware effectuates a plan, by combination with another manufacturer and distributor of such forming machines, to obtain patent control of both feeders and forming machines, where the forming machines perform a different and successive process in the manufacture of articles of glassware from molten glass, it is a violation of Sections 1 and 2 of the Sherman Act, (a) if the effectuation of such a plan involves the combining together in one hand of the licensing of both feeders and forming machines where the patent control over the forming machines as well as that over the feeders arose out of unlawful combination prior to the combining of control of licensing of both types in one hand; and (b) if the effectuation of such a plan involves the use of patent rights covering inventions embodied in forming machines to bolster up and strengthen the control of feeders.

[fol. 13598] VII. *Licensing Conditions and Restrictions.*

29. The question whether conditions and restrictions imposed by a patentee upon a licensee are normally and reasonably adapted to secure the pecuniary reward to which the patentee is entitled by reason of the patent monopoly, is one to be determined by the Court under all the circumstances of the case, and is not a question of policy reserved for the judgment of the patentee.

30. A cross-licensing agreement between a major manufacturer and distributor of automatic machinery used in the manufacture of unpatented glassware, and the largest

manufacturer of certain specialty fields of glassware, pooling the patent rights of both parties and allotting to the glassware manufacturer exclusive rights under such patents for the manufacture and licensing in certain minutely specified fields of ware, while allotting to the machinery distributor exclusive rights to license and distriubte in certain other fields, is a violation of Sections 1 and 2 of the Sherman Act.

30a. An agreement between the largest manufacturer of certain types of non-container ware with a manufacturer and distributor of automatic machinery for making unpatented glassware, giving the manufacturer of glassware exclusive rights on such automatic machinery for the purpose of obtaining and maintaining domination and control in the manufacture of glassware with respect to the non-container field, and for the purpose of obtaining and maintain-[fol. 13599] ing domination and control of automatic machinery in the manufacture and distribution of such machinery, and domination and control of glassware in the container field, constitutes a violation of Sections 1 and 2 of the Sherman Act.

31. Where, pursuant to a conspiracy, patents are acquired for the purpose of dominating and controlling automatic machinery used in the manufacture of unpatented glassware, any restraints in the licensing of such patents, upon the manufacture of unpatented glassware, violates Section 1 of the Sherman Act.

32. Where, as part of a conspiracy to acquire patents for the purpose of dominating and controlling the manufacture and distribution of automatic machinery, and the manufacture and distribution of unpatented products made thereon, restricted licenses are granted to manufacturers of the unpatented glassware, such restrictions violate Section 1 of the Sherman Act.

33. Patent license agreements between the principal manufacturer and distributor of automatic machinery used in the manufacture of unpatented glassware, and manufacturers of unpatented glassware, containing restrictions designed to result in restriction or stabilization of the production of unpatented glassware made on such machinery, and which may tend to have that effect, are contracts in violation

of Section 1 of the Sherman Act in that they unreasonably restrain trade, regardless of the fact that the license agreements do not contain provisions fixing, pegging or stabilizing the price at which glassware made on the licensed machinery may be sold.

[fol. 13600] 34. Where a manufacturer and distributor of automatic machinery used in the manufacture of unpatented glassware has acquired patents in connection with a conspiracy to obtain patents from the Patent Office for the purpose of obtaining domination and control of the business of making and distributing such automatic machinery, and licenses the patents to divide the fields of ware, to limit the number of manufacturers of unpatented glassware, to restrict the manufacturers of unpatented glassware to the manufacture of certain specified kinds of ware, to limit the quantities of unpatented glassware to be produced, and otherwise imposes restrictions in connection with the manufacture of unpatented glassware, such restrictions constitute violations of Section 1 of the Sherman Act.

35. Where a manufacture- of unpatented glassware combined with a manufacturer or manufacturers of unpatented glassware to dominate and control the business of making and distributing such automatic machinery, and the business of making and selling unpatented glassware, the use of restrictions in patent license agreements by such manufacturer and distributor of automatic machinery to limit the number of manufacturers of unpatented glassware, to divide the fields of ware, to limit the manufacturers of unpatented glassware to certain lines of ware, to limit the quantities of unpatented glassware to be produced, and otherwise restrict the manufacture of glassware, such restrictions constitute violations of Section 1 of the Sherman Act.

36. Where a manufacturer and distributor of patented automatic machinery used in the manufacture of unpatented glassware combines with one or more manufacturers of unpatented glassware to dominate and control the trade and commerce in the manufacture and distribution of such ma- [fol. 13601] chinery and glassware, the consistent refusal of the manufacturer and distributor of the patented machinery to license and lease it to persons or concerns (1) intending to engage but not then engaged, in the manufac-

ture of glassware in competition with some or all of the said manufacturers of glassware, or (2) intending to fill the glassware so manufactured with products manufactured by themselves or packed by themselves instead of using glassware manufactured by others, is a violation of Section 1 of the Sherman Act.

37. Where a manufacturer and distributor of patented automatic machinery used in the manufacture of unpatented [fol. 13602] glassware combines with one or more manufacturers of unpatented glassware to dominate and control the trade and commerce in the manufacture and distribution of such machinery and glassware, the effective prevention of persons and concerns from engaging in the manufacture and distribution of glassware of any or all types by the machinery manufacturers through refusal to grant applicants license agreements, or through the granting of restricted license agreements, to use such machinery, because said manufacture and distribution of glassware by said applicants under the proposed license agreements would (1) create or increase competition with other licensees of said machinery or (2) would result in creating additional capacity to produce in the glassware industry, is a violation of Section 1 of the Sherman Act.

38. Where the owner of patents covering inventions embodied in, but not controlling the use of automatic machinery used in the manufacture of glassware, licenses another to use such machinery subject to restrictions upon the amount and types of unpatented glassware which may be made on the machine, such restrictions cannot be justified under the patent laws although the licensor at the time of their imposition has an honest expectation of eventually acquiring patents controlling such machinery.

38a. An agreement between the largest manufacturer of glassware using one type of automatic machinery for making unpatented glassware, and the manufacturer and distributor of an alternative type of automatic machinery for making such glassware, both methods being the only two commercial methods for making glassware on automatic machinery, to restrict their commercial activities to the development, manufacture, and licensing of machinery in their own respective fields, constitutes a violation of Section 1 of the Sherman Act.

38b. Covenants in license agreements acknowledging the validity of future patents although within the scope of the license are unenforceable if the parties to the agreements dominate and control the industry.

[fol. 13603] *VIII. Benefits or Good Motives no Defense to a Combination in Restraint of Trade.*

39. If the necessary effect of the acts of the defendants was to restrain or monopolize or attempt to monopolize trade or commerce unduly; or if, without this necessary effect, the defendants acted with the intent so to restrain, monopolize or attempt to monopolize trade or commerce, the fact that they may have entertained good motives is no defense or justification.

40. Where defendants are shown to have restrained, monopolized or attempted to monopolize trade and commerce unduly, it is no defense or justification for them to show that their activities had beneficial results in that (a) the acts of the defendants prevented widespread financial ruin; (b) the acts of the defendants eliminated cut-throat competition or alleged piracy of patent right; (c) the acts of the defendants brought about a stabilization of the industry; (d) the acts of the defendants cheapened the methods of manufacture; (e) the acts of the defendants reduced the price of glassware; (f) the acts of the defendants increased the production and sale of glassware; or (g) the acts of the defendants increased competition in certain fields or between certain manufacturers of glassware.

IX. Combination to Secure Price Leadership.

41. Concerted action by a trade association, in combination with leading manufacturers of glassware, for the purpose of having one of such leading manufacturers issue a price list to serve as a guide for other manufacturers of the same type of ware, is in violation of Section 1 of the Sherman Act.

42. Concerted action by a trade association, in combination with leading manufacturers of glassware, to establish a system of price leadership which was thereafter established through the publication of prices by leaders in certain lines of ware, which prices were followed voluntarily by other manufacturers of the same lines of ware, is in violation of Section 2 of the Sherman Act.

[fol. 13604] *X. Legality of Trade Association Activities in Restricting Production and Excluding Newcomers.*

43. The creation and maintenance of a trade association by manufacturers in an industry, for the purpose of persuading members of the industry by moral sanctions to restrict production for the purpose of maintaining prices, is in violation of Section 1 of the Sherman Act. This is so, even if only a few of the manufacturers in the industry are persuaded by the association so to restrict their production.

44. The adoption or pursuit by a trade association of a policy of furnishing prospective newcomers in the industry with information designed to discourage such newcomers from entering the industry, is in violation of Section 1 of the Sherman Act, where the facts furnished, though true, are deliberately colored by the association for the purpose of discouraging newcomers. This is especially true where the information to newcomers is furnished at the request of manufacturers in the industry who are members of the trade association.

XI. Abandonment of an Illegal Conspiracy.

45. Once a defendant has been shown to have been a party to a conspiracy in violation of the antitrust laws, the burden is on that defendant to go forward and show that it thereafter took some positive step to denounce or withdraw from the conspiracy.

46. Once a defendant has been shown to have been a party to a conspiracy in violation of the antitrust laws, mere failure to commit any further acts in furtherance of such conspiracy will not constitute an abandonment therof, especially where such defendant continues to receive and share in the fruits of the conspiracy, with knowledge of their source.

46a. Abandonment of a practice, or cancellation of a contract by the parties to a combination or conspiracy in violation of the antitrust laws, after the United States has challenged the legality of said practice or contract, by filing a complaint against said parties or any of them, or otherwise, will not render the issue as to the legality of the challenged practice or contract moot in a suit by the United States on said complaint.

[fol. 13605] 46b. Abandonment of a practice, or cancellation of a contract by the parties to a combination or conspiracy in violation of the antitrust laws, after the United States has challenged the legality of said practice or contract, by filing a complaint against said parties or any of them, or otherwise, will not render the issue as to the legality of the challenged practice or contract moot in a suit by the United States on said complaint, where there is a reasonable likelihood that the contract or practice will be resumed in the absence of the issuance of an injunction restraining its resumption.

XII. Right to Injunction Against Enforcement of Patents Illegally Obtained and Used.

47. Defendants who have effectuated a conspiracy to obtain and use patent rights in violation of the antitrust laws, should be enjoined from enforcing those patent rights, whether by suits for infringement, suits to collect royalties or suits to interfere with the possession of machinery or otherwise, until the effects of such violation have been fully dissipated.

XIII. Conclusions as to Corporate Defendants.

48. The defendants Hartford, Corning, Empire Machine, Owens, Hazel-Atlas, Lynch, and Ball Brothers, have violated and are now violating Sections 1 and 2 of the Sherman Act, in that they have misused and are now misusing the patents owned by each of them relating to automatic machinery for the making of unpatented glassware, for the purpose and with the effect of acquiring, maintaining and strengthening their domination and control over the manufacture and distribution of such automatic machinery and such unpatented glassware.

48a. Hartford, Empire Machine, Corning and Owens violated Sections 1 and 2 of the Sherman Act in that they contracted, combined and conspired to obtain patent rights to control the glassmaking machinery and glassware industries.

49. Hartford, Owens and Corning are violating Section 2 of the Sherman Act in that they are monopolizing both patents relating to machinery for the production of glassware, and machines for the production of glassware.

50. Hartford is violating Section 2 of the Sherman Act in [fol. 13606] that it monopolized patents relating to feeding, forming and annealing machinery, and in that it monopolizes the manufacture and distribution of feeders and lehrs and the licensing and distribution of forming machines.

51. Owens, Hazel-Atlas, Thatcher and Ball Brothers are violating Section 2 of the Sherman Act, in that they are monopolizing the production and distribution of glass containers.

52. The 1916 agreement between Hartford-Fairmont and Empire Machine (Ex. 1) violated Section 1 of the Sherman Act, in that through the allocation of patent rights it restrained trade in machines used in the production of glassware, and in the manufacture and distribution of glassware.

53. The 1922 Glass Contract between Hartford-Fairmont, Hartford, Corning, and Empire Machine (Ex. 19) violated Section 1 of the Sherman Act in that through the allocation of patent rights it restrained trade in machines for the production of glassware, and in the manufacture and distribution of glassware.

54. The 1922 Agreements between Hartford-Fairmont, Hartford, Corning, and Empire Machine (Exs. 16, 19) violated Section 2 of the Sherman Act in that they were an attempt to monopolize patents covering inventions embodied in machinery for the production of glassware, to monopolize machines for the production of glassware, and to monopolize the manufacture and distribution of bulbs, signal and optical ware, chemical and heat-resistant ware, ovenware, tubing and cane, and particularly heat-resistant glassware.

55. The acquisition of the patents, patent rights and assets of the Howard Company (Ex. 61) by Hartford in 1922 violated Section 1 of the Sherman Act in that through the acquisition of patent rights it restrained trade in machines used in the production of glassware, and the manufacture and distribution of glassware.

56. The acquisition of the Howard Company (Ex. 61) by [fol. 13607] Hartford in 1922 violated Section 2 of the Sherman Act in that it was an attempt to monopolize patents

covering inventions embodied in machinery used in the production of glassware, to monopolize machines for the production of glassware, and to monopolize the manufacture and distribution of glassware.

57. The 1924 agreement between Owens and Hartford (Ex. 55) violated Section 1 of the Sherman Act in that, through the use of patent rights, it restrained trade in machines used in the production of glassware, and in the manufacture and distribution of glassware.

58. The 1924 agreement between Owens and Hartford (Ex. 55) violated Section 2 of the Sherman Act in that it was an attempt to monopolize patents covering inventions embodied in machinery used in the production of glassware, to monopolize machines used in the production of glassware, and to monopolize manufacture and distribution of glassware.

59. The acquisition of the patents, patent rights and assets of Tucker, Reeves and Beatty in 1925 by Hartford and Owens (Exs. 90-107) violated Section 1 of the Sherman Act in that it restrained trade through the acquisition of patent rights covering inventions embodied in machines used in the production of glassware, and in the manufacture and distribution of glassware.

60. The acquisition of the patents, patent rights and assets of Tucker, Reeves, and Beatty in 1925 by Hartford and Owens (Exs. 90-107) violated Section 2 of the Sherman Act in that it was an attempt to monopolize patents covering inventions embodied in machinery for the production of glassware, to monopolize machines for the production of glassware, and to monopolize the manufacture and distribution of glassware.

61. The acquisition of the feeder patent, and patent rights of William J. Miller (Exs. 81-89) by Hartford and Owens violated Section 1 of the Sherman Act in that through the acquisition of patent rights it restrained trade in machines used in the production of glassware, and the manufacture and distribution of glassware.

[fol. 13608] 62. The acquisition of the feeder patents and rights of William J. Miller (Exs. 81-89) by Hartford and Owens violated Section 2 of the Sherman Act in that it was an attempt to monopolize patents covering inventions

embodied in machinery used in the production of glassware, to monopolize machines used in the production of glassware, and to monopolize the manufacture and distribution of glassware.

63. The 1932 agreements between Hartford, Owens, and Hazel-Atlas (Ex.142-9) violated Section 1 of the Sherman Act in that through the use of patents they restrained trade in machines used in the production of glassware, and in the manufacture and distribution of glassware.

64. The 1932 agreements between Hartford, Owens, and Hazel-Atlas (Exs. 142-9) violated Section 2 of the Sherman Act in that they were a combination to monopolize patents covering inventions embodied in machinery used in the production of glassware, to monopolize machines used in the production of glassware, and to monopolize the manufacture and distribution of glassware.

64a. The acquisition by Hartford and Owens in 1933 of the patents, patent rights and assets of O'Neill and The O'Neill Company (Exs. 264-265) violated Section 1 of the Sherman Act in that through the acquisition of patent rights it restrained trade in machines used in the production of glassware, and the manufacture and distribution of glassware.

65. The acquisition by Hartford and Owens in 1933 of the patents and assets of O'Neill and The O'Neill Company (Exs. 264-265) violated Section 2 of the Sherman Act in that it was an attempt to monopolize patents relating to machinery used in the production of glassware, to monopolize machines used in the production of glassware, and to monopolize the manufacture and distribution of glassware.

66. The August 23, 1933 agreements between Hartford and Lynch (Exs. 329, 330) between Owens and Lynch [fol. 13609] (Ex. 328), and the August 21, 1933 agreement between Ed. Miller and Lynch (Ex. 327) violated Section 2 of the Sherman Act in that they were contracts and combinations to monopolize patents covering inventions embodied in machinery used in the production of glassware, machines used in the production of glassware, and the manufacture and distribution of glassware.

67. The acquisition by Lynch of the business of the Miller Machine and Mold Works, with the aid of Hartford and Owens and in pursuance of a plan by all parties to corner the forming machine market, was illegal under Sections 1 and 2 of the Sherman Act.

67a. The forming machine agreement between Hartford and Lynch, under which Lynch was licensed to make and deliver forming machines embodying Hartford inventions only to concerns which had obtained a license under Hartford forming machine inventions, and under which Hartford agreed to offer forming machines licenses (1) without additional royalty only to those who already had Hartford feeder licenses and (2) only to manufacture specified types of glassware, was in violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act when applied to machines manufactured and sold outright by Lynch, because

(a) it involved the use of patents to control the machines after Lynch had parted with title to them; and

(b) it involved, in practical effect, a tying clause which prevented lessees of Hartford feeders using them in conjunction with Lynch forming machines from acquiring any other feeder for use with such forming machines, and thus contemplated the leasing of feeders on the condition or understanding that the lessee should not use or deal in the feeders of competitors of the lessor, where the effect of such lease might be substantially to lesson competition or tend to create a monopoly, in violation of Section 3 of the Clayton Act.

[fol. 13610] 68. The August 23, 1933 agreement between Hartford and Lynch (Ex. 330) violated Section 3 of the Clayton Act in that by compelling a purchaser of a forming machine from Lynch to use a Hartford feeder it substanially lessened competition and tended to create a monopoly in glassmaking machinery.

69. Hartford and Owens violated Section 1 of the Sherman Act in that they combined and conspired to restrain trade in machinery used in the annealing of glassware.

69a. The defendants Hartford, Empire Machine, Corning, Owens, Hazel-Atlas, and Lynch have violated Sections 1 and 2 of the Sherman Act in that they have combined to

dominate the automatic glassmaking machery industry, and their power to fix and maintain royalties for the use of inventions covered by patents controlling such machinery is tantamount to the power to fix the prices of glassware made thereon.

70. Hartford, Thatcher and Owens violated Section 1 of the Sherman Act in that by agreements between them, by the use of patents, and by acquisitions by Thatcher and Owens of other producers of milk bottles, they restrained trade in machines used in the production of milk bottles, and in the manufacture and distribution of milk bottles.

71. Hartford, Thatcher, and Owens violated Section 2 of the Sherman Act in that by agreements between them, by the use of patents, and by acquisitions of Thatcher and Owens of other producers of milk bottles, they combined and conspired to monopolize patents covering inventions embodied in machinary used in the production of milk bottles, machines used in the production of milk bottles, and the manufacture and distribution of milk bottles.

[fol. 13611] 72. Hartford, Thatcher and Owens are violating Section 2 of the Sherman Act in that by agreement between them, by the use of patents, and by acquisitions of Thatcher and Owens, they are monopolizing patents covering inventions embodied in machinery used in the production of milk bottles, and machines used in the production of milk bottles.

73. Thatcher and Owens are violating Section 2 of the Sherman Act in that by agreements between them and with Hartford, and by the acquisitions by each of them of the producers of milk bottles, they are monopolizing the production and distribution of milk bottles.

74. The acquisition by Ball Brothers of the fruit jar business of Knox in March 1933 (1712-13, Ex. 196), of Brockway in April 1933 (Ex. 201), and of Gayner in May 1933, (10834), together with the covenants of Knox, Brockway, and Gayner not to compete with Ball Brothers in the manufacture of fruit jars, violated Sections 1 and 2 of the Sherman Act in that they restrained trade in the production and distribution of fruit jars, and were in furtherance of a plan to obtain and maintain a monopoly in the production and distribution of fruit jars.

75. The March 25, 1933 agreement between Ball Brothers and Hartford (Ex. 199) violated Section 1 of the Sherman Act in that through the use of patents, it restrained trade in machines used in the production of fruit jars, and in the manufacture and distribution of fruit jars.

76. The March 25, 1933 agreement between Ball Brothers and Hartford (Ex. 199) violated section 2 of the Sherman Act in that it was a combination to monopolize patents covering inventions embodied in machinery used in the production of fruit jars, machines used in production of fruit jars, and the manufacture and distribution of fruit jars.

77. Ball Brothers, Hazel, and Owens are violating Section 2 of the Sherman Act in that they are monopolizing the production and distribution of fruit jars.

78. The oral understanding between Ball Brothers, Hartford, Hazel-Atlas and Owens of February or March 1933, that Hazel-Atlas and Owens would each restrict its production and shipments of fruit jars violated Section 1 of the Sherman Act in that it restrained trade in the production and distribution of fruit jars.

79. The acquisition in 1936 of the assets of the Three Rivers Glass Co., by Ball Brothers, violated Sections 1 [fol. 13612] and 2 of the Sherman Act in that it restrained trade in the production and distribution of fruit jars, and was in furtherance of a plan to obtain and maintain a monopoly in the production and distribution of fruit jars.

80. The 1935 agreements between Hartford, Owens, and Hazel-Atlas (Exs. 568-572) violated Section 1 of the Sherman Act, in that through the use of patents they restrained trade in machines used in the production of glassware and in the manufacture and distribution of glassware.

81. The 1935 agreements between Hartford, Owens and Hazel-Atlas (Exs. 568-572) violated Section 2 of the Sherman Act, in that they constituted a combination to monopolize patents covering inventions enbodied in machinery for the production of glassware, to monopolize machines used in the production of glassware, and to monopolize the manufacture and distribution of glassware.

82. The covenants in the July 1, 1932 agreements between Hartford and Hazel-Atlas (Ex. 142, §10), Hartford

and Owens (Ex. 145, §8), and Owens and Hazel-Atlas (Ex. 148, §7), whereby each party acknowledged the validity and broad scope of all exisiting and future licensed inventions of the other party, and the covenants acknowledging the validity of Hartford's future patents in all other Hartford license agreements, violated Section 1 of the Sherman Act in that they restrained trade in the licensing of patents covering inventions embodied in glassmaking machinery, and in the manufacture and distribution of glassmaking machinery.

83 Insofar as the patent license agreements of Hartford, Corning, Empire Machines, Lynch, Owens and Hazel-Atlas have been used to divide the fields of ware, to limit the number of manufactures of unpatented glassware, to limit manufactures of unpatented glassware to certain lines of ware, to limit the quantities of unpatented glassware to be produced, and otherwise to restrict the manufactures of glassware, such licenses were not and are not licenses upon conditions normally and reasonably adapted to secure the pecuniary reward for any patent which defendants [fol. 13613] or any of them may have had, or now have, and were not and are not within any privileges or immunities which the patent law confers upon such defendants, or any of them, and by virtue of any patents, and were and are violations of Section 2 of the Sherman Act.

84. Insofar as the provisions of any patent license agreement by Hartford, Corning, Empire Machine, Lynch, Hazel-Atlas or Owens, has been used to stabilize the market of unpatented glassware, whether for the purpose of maintaining prices or for the purpose of restricting production, such provisions are not conditions normally and reasonably adapted to secure pecuniary reward for any patent which such defendants or any of them may have, and are not within any privileges or immunities which the patent laws confer upon the defendants, or any of them, by virtue of any patents, and are violations of Section 1 of the Sherman Act.

85. Hartford, Empire Machine, Corning, Owens and Hazel-Atlas, insofar as they have required and do require as a condition of any license agreement that the fields of unpatented glassware be divided, that the number of types of license be limited or that any licensee be restricted in

the production of unpatented glassware as to amount, quality or kind of unpatented glassware, entered into agreements in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act.

86. Defendant Glass Container Association violated Sections 1 and 2 of the Sherman Act in that through its system of quotas, its activities to keep newcomers from entering the glassware industry, its activities to prevent the expansion of Knox, and its activities with respect to prices of glassware, it restrained trade and promoted a monopoly in the manufacture and distribution of glassware.

XIV. *Conclusions as to Individual Defendants*

87. The individual defendants connected with Hartford, namely, F. Goodwin Smith, Bartlett Arkell, Alexander D. Falck, Robson D. Brown, Roger M. Eldred, Karl E. Peiler, [fol. 13614] Arthur T. Safford, Jr., Theodore L. Champeau, A. M. Pease, Amory Houghton, Arthur A. Houghton, Jr., and Isaac J. Collins; the individual defendants connected with Corning, namely, Alexander D. Falck, Amory Houghton, Arthur A. Houghton, Jr., Eugene C. Sullivan, William H. Curtiss, J. L. Peden, and Arthur L. Day; the individual defendants connected with Empire Machine, namely, Alexander D. Falck, Amory Houghton, Arthur A. Houghton, Jr., and Arthur L. Day; the individual defendants connected with Owens, namely, William H. Levis, E. F. Martin, John H. McNerney, R. H. Barnard, C. B. Belknap, Harold Boeschenstein, W. H. Boshart, H. E. Collin, George P. Greenhalgh, W. W. Knight, F. H. McAdoo, C. J. Root, F. W. Schwenck; the individual defendants connected with Hazel-Atlas, namely, J. Harrison McNash, Walter H. McClure, George S. Quay, L. C. Paull, H. W. Gee, William W. Holloway, and B. H. Seabright; the individual defendants connected with Lynch, namely, Thomas Chandler Werbe, E. C. Bridges, A. G. Doll, J. L. Watts, Uz McMurtrie, N. N. McCullough; the individual defendants connected with Ball Brothers, namely, Frank C. Ball, George A. Ball, W. H. Ball, Edmund F. Ball and Fred J. Petty; and the individual defendants connected with Thatcher, namely, H. C. Mandeville, R. W. Niver, E. F. Wellinghoff, S. G. H. Turner, Jervis Langdon, W. H. Mandeville, F. W. Swan, Stanton Griffis; and J. D. Dilworth, W. V. Fisher and T. C. Fulton violated Sections 1 and 2 of the Sherman

Act in that they have participated in the conspiracies relating to (1) patents covering inventions embodied in machines for the manufacture of glassware, (2) machines used in the manufacture of glassware, (3) the manufacture and distribution of glassware.

88. The individual defendants connected with the Glass Container Association, namely, Charles R. Stevenson and Emory G. Ackerman violated Sections 1 and 2 of the Sherman Act in that they have participated in conspiracies relating to the manufacture and distribution of glassware.

89. The individual defendant G. F. Rieman violated Sections 1 and 2 of the Sherman Act in that he participated [fol. 13615] in the conspiracies relating to machines used in the manufacture of glassware and the manufacture and distribution of glassware.

90. Each of the above named individual defendants has violated Sections 1 and 2 of the Sherman Act in that he has authorized, ordered or done some of the acts heretofore found to have been done by one or more of the corporate defendants.

Respectfully submitted, Thurman Arnold, Assistant Attorney General. Samuel S. Isseks, Lawrence S. Apsey, Special Assistants to the Attorney General. Victor H. Kramer, Seymour D. Lewis, Frank Shields, Special Attorneys.

July 18, 1942.

I have on this day caused copies of the above to be delivered or mailed to Counsel for the defendants.

(Signed) Seymour D. Lewis.

[fol. 13616] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

REQUESTS FOR FINDING BY CORNING GLASS WORKS ET AL.—Filed July 17, 1942

Defendant Corning Glass Works and associated defendants and associated defendants of Empire Machine Com-

pany respectfully submit and request the following findings of fact and conclusions of law:

Findings of Fact

1. Corning Glass Works, hereinafter called Corning, was incorporated in New York in 1875 (Paragraph 4 of Complaint admitted in Answer).

2. It made glass bulbs for the first incandescent lamp for Mr. Edison about 1876 and electric light bulbs have been one of its principal products ever since. (Tr. 8476)

[fol. 13617] 3. Up to 1909 it was practically all a hand shop and in that year its products were electric light bulbs, railway lantern globes, railway and marine signals, glass tubing and cane. (Tr. 7815)

4. In 1915 Corning's laboratory had invented the heat resistant glass trademarked "Pyrex" and by 1916 this was being used for cooking ware, laboratory jars, technical glassware and battery jars. (Tr. 8513-8514). Applications filed 1915, Patents issued 1919. (Tr. 7818-7819)

5. Cooking ware was a new use for glass, it having supplanted earthernware, aluminumware, tinware and enamelware. (Tr. 8514, 8639)

6. The laboratory jars and technical glassware supplanted the German glass whose import was cut off by the first World War. (Tr. 8469)

7. Bulbs, tubing and cane, railway lantern globes, railway and marine signals and resistant ware, with continual refinements, are Corning's principal products today. (Tr. 8642)

8. In its laboratory Corning employs 180 people—physicists, chemists and engineers—and spends for development work about $850,000 a year. (Tr. 8635)

9. Corning's inventors invented the so-called Ribbon Ma-
[fol. 13618] chine, a machine primarily for bulbs which produces over 600 bulbs a minute. (Tr. 7841-7845). Patents issued 1931.

10. On its Ribbon Machine Corning also makes tumblers, a small quantity of which since 1938 it has sold for packers ware. This is the only container which Corning ever made

except for an abortive attempt to make fruit jars out of heat resistant ware, a very few of which were sold. (Tr. 8560). Corning's Ribbon Machine was never used by anybody but Corning to make containers. (Tr. 1149)

11. Empire Machine Company, hereinafter called Empire, was a Maine corporation incorporated in 1909 to take over some applications for patents on automatic bulb blowing machines, which had been financed by Messrs. A. B. and A. A. Houghton and to continue the development work undertaken primarily for automatic bulb blowing machines. (Tr. 8480)

12. During the time these inventions were being made and the machines developed Mr. Amory Houghton, the father of A. B. and A. A. Houghton, was president of Corning and he would not let Corning spend any money for such development; he didn't believe a bulb could be blown automatically. (Tr. 8480, 7822)

13. The development by Empire was carried on absolutely independently of Corning. (Tr. 8492)

[fol. 13619] 14. Empire paid rent to Corning for a space in Corning's buildings where its inventors worked. (Tr. 8492)

15. Empire's inventor Chamberlin invented the "E" machine which was a semiautomatic paste-mold machine primarily for bulbs. (Tr. 8480; Ex. C-5385)

16. Empire's inventor Canfield invented the "F" machine, a paste-mold machine primarily for bulbs, and built one late in 1913 or early in 1914. It was wholly automatic but had no feeder. (Tr. 7376)

17. Empire's inventor Chamberlin made inventions in 1913 trying to devise an automatic feeder for the "F" machine and some applications covering this work were filed in the Patent Office. (Tr. 7379)

18. Empire quit all development work in 1915 and its engineers left its employ and never returned. (Tr. 8512)

19. Empire was dissolved, with the consent of the plaintiff in this case, the order dissolving it having been dated January 8, 1941. (Tr. 8491)

20. At the time of its dissolution it owned 201,500 shares of the capital stock of Hartford-Empire. This stock was distributed to Empire's stockholders on its dissolution. (Ex. C-5652)

21. On or about June 30, 1916 Empire and Hartford-[fol. 13620] Fairmont entered into a contract, Exhibit 1.

22. That the parties to the contract first met by reason of the declaration of interferences between the applications of Peiler, the Hartford-Fairmont inventor, and Chamberlin, the Empire inventor, which interferences and applications are referred to in Exhibit 1. (Tr. 7382)

23. At the time of the making of the contract Empire had patents and pending applications on three different types of glass blowing machines, the "C", "E" and "F", and two applications on feeders. It had no machine capable of feeding glass. (Tr. 7383)

24. The "E" machine was semiautomatic, was being used by Corning under license and produced a great many bulbs. (Tr. 8507)

25. The "F" machine was a wholly automatic machine except that it had no feeder. (Tr. 8508-8509)

26. Empire was anxious to get a feeder for its "F" machine (Tr. 8525).

27. Hartford-Fairmont was organized primarily to develop machines for the container industry—iron-mold machines—and Empire for the bulb industry—paste-mold machines. (Tr. 6838)

28. The industry which produces electric light bulbs, tableware, heat resistant ware, lamp chimneys, signal and optical ware, scientific and laboratory glassware is a differ-[fol. 13621] ent industry from the container industry which produces packers ware, pharmaceutical, prescription and toilet ware, liquor and beer bottles, fruit jars, jelly glasses, milk bottles and the like. (Paragraph 29 of Complaint; Tr. 8569; Exhibits 1568, C-5667, C-5668)

29. These two industries, as set out in Finding 28, are independent for commercial purposes. (Paragraph 29 of Complaint)

30. This division between the industries existed while all shops were hand shops and there was no classification by the restricted use of patents. (Tr. 8476, 8512)

31. In 1916 and in 1922 every product made by Corning was made of glass having a different composition from that used by the maker of containers. (Tr. 8642)

32. Corning Glass Works was not a member of the Glass Container Association.

33. Empire was prompted to make the 1916 contract solely by the motives set out in the recitals. (Exhibit 1, Tr. 8520)

34. Empire and Hartford-Fairmont were not competitors at the time of the making of the contract. (Tr. 5-6, 6838, 7369-7371, 8512)

35. That no reasonable probability of potential competition was prevented by the 1916 contract.

36. The 1916 contract was canceled by the contract dated September 23, 1940. (Exhibits H-5030 and H-5031, Tr. 1614-1615)

[fol. 13622] 37. That Empire purchased the Steimer application for the benefit of it and of Hartford-Fairmont, believing that the control of the patent to be issued on the Steimer application was necessary if they were to be free to exercise the rights granted them by the 1916 contract. (Ex. 5228)

38. The Formation Agreement, Exhibit 16, was dated October 6, 1922 and the parties thereto were Hartford-Fairmont Company and its stockholders and Empire Machine Company and its stockholders. (Exhibit 16)

39. By this Formation Agreement Empire turned over all its assets to the new company, Hartford-Empire Company, except the stockholdings in American Blank Company, the corporation which licensed General Electric and Corning, and the contract between Empire, Corning, General Electric and American Blank and agreed to pay Hartford-Empire Company from the dividends of American Blank (a) sums equal to the royalties on bulbs manufactured by Corning and sold to others than General Electric at rates set out in the contract, (b) yearly the sum of

$40,000, and (c) payment equal to 20% of the cost of manufacture of additional bulb forming machine equipment used by Corning under license from American Blank over and above its present equipment. (Exhibit 16)

40. For these assets and promises Empire received 45% [fol. 13623] of Hartford-Empire Company; 10%, however, of the stock was returned to the treasury of the company to be issued to key employees. (Exhibit 16)

41. By this agreement Empire, which was no longer developing, traded most of its earnings for stock in Hartford-Empire Company. (Tr. 8511)

42. The agreement dated October 6, 1922 (Exhibit 19) between Hartford-Fairmont, Empire, Corning and Hartford-Empire in effect gave Corning exclusive rights to use Hartford's patented inventions obtained prior to January 1, 1940 for the manufacture of bulbs, tubing and cane for incandescent lamps, signal and optical ware, resistant ware, cooking ware, glass for electrical purposes, tubing and cane.

43. That these fields were the fields in which Corning had worked since they came into existence. (Tr. 8642)

44. This contract also gave Hartford rights exclusive, except for shoprights in Corning, to use Corning's patents on machines and formulas obtained prior to January 1, 1940 for the making of containers unless those containers were made of resistant glass as defined by the contract or were paste-mold ware and Corning was already making them before any license was granted by Hartford. (Exhibit 19)

[fol. 13624] 45. This contract called for royalties from Corning on its use of Hartford machines other than the paddle feeder. (Exhibit 19)

46. That Hartford, although it spent a good deal of money in endeavoring to bring it about, was never able to utilize the ribbon machine inventions in the container industry. (Tr. 1149)

47. That Corning made paste-mold tumblers on the Ribbon Machine before Hartford issued any licenses thereon. (Tr. 1145)

48. The only restraint placed upon competition by this glass and machine agreement was the natural and inevitable

restraint caused by the taking of licenses under United States Patents exclusive in certain fields. (Exhibit 19)

49. That no reasonable probability of potential competition was prevented by the 1922 contract.

50. That potential competition between Hartford and Corning in the manufacture of glassware was not unreasonably eliminated.

51. Corning and Empire were prompted to make this 1922 glass and machine agreement (Exhibit 19) primarily to get a feeder for the "F" machine and improved feeders if such came out and had no motives other than to acquire the rights recited in said agreement. (Tr. 8559)

[fol. 13625] 52. There is no proof that Corning dominated the bulb industry. (Tr. 2908)

53. There is no proof that Corning dominated the tubing industry. (Tr. 2007)

54. There is no proof that Corning dominated the optical ware industry.

55. That after the expiration of Corning's patent on resistant ware it did not dominate that field. (Tr. 5259-5260)

56. The 1922 contracts were canceled on September 23, 1940. (Exhibits H-5030 and H-5031; Tr. 1614-1615)

57. That Corning, other than using tumblers for containers, never seriously tried to get into the container industry; that the markets and marketing were entirely different and Corning had no sales organization to sell containers. (Tr. 8560)

58. That Empire never tried to get stock or other control of Hartford-Empire. (Ex. 676; Tr. 2030; Ex. 5049, Tr. 8530)

59. That Corning never tried to get stock or other control of Hartford-Empire. (Ex. 676)

60. That neither Corning nor Empire dominated or attempted to dominate Hartford-Empire or the management of its affairs.

61. That there is no proof that the common directors of [fol. 13626] Empire and Hartford-Empire ever voted at a

directors' meeting of Hartford-Empire other than in favor of what they believed was for the best interests of Hartford-Empire.

62. That A. B. Houghton, A. A. Houghton, Alexander D. Falck, Amory Houghton and Arthur A. Houghton, Jr. at the respective times at which they were on the board of directors of Hartford-Empire represented the stockholder Empire.

63. That there is no proof that the directors common to Hartford-Empire and Corning ever voted at a Hartford-Empire meeting in favor of a proposition beneficial to Corning and against the interests of Hartford-Empire.

64. That the correspondence between the officers of Hartford-Empire and the common directors in all but very few instances applied solely to the problems of Hartford without reference in any way to Corning's interests. (Tr. 4929-4932)

65. That the patent rights which Corning received under the 1922 contract were never increased. (Tr. 2004, 2006-2007; Ex. 695, Tr. 6702-6705)

66. That the Peiler punty patent was not useful in the container industry. (Tr. 6702)

67. That the Peiler punty patent read on the Danner machine. (Ex. 689, Paragraph 6)

[fol. 13627] 68. That Corning had under the 1922 agreement exclusive rights to the use of the Peiler punty for the making of tubing. (Exhibit 19, Tr. 2008)

69. That the payment of the sum of $350,000 by General Electric, Corning, Kimble and Libbey, all of whom used the Danner machine, simply was a lump sum payment of royalty and gave no additional rights to Corning. (Tr. 2008)

70. That Hartford never made a tube drawing machine. (Tr. 2008)

71. That the deal under which Corning and its associates paid up the royalty was at arms' length and both parties satisfied. (Tr. 2008)

72. That by the 1922 contract Corning had bulb rights under the Howard Auto Blow patent.

73. That the machine built according to the specifications of the Howard Auto Blow was not a commercial success. (Tr. 6704, 6692)

74. That no machine following the specifications of the Smith Reissue patent was ever built. (Tr. 6705)

75. The assignment by Hartford to Corning of the Peiler Punty, Howard Auto Blow and Smith Reissue patents on September 23, 1940 was made at the suggestion and with [fol. 13628] the full knowledge of the Government.

76. That the assignment of these three patents to Corning gave Corning substantially no rights additional to those it had under the 1922 agreement.

77. That no proof has been produced by the Government to show that the rights given up by Corning in the cancellation of the 1922 agreement were worth less than the value of these three paper patents and $1,125,000.

78. That since the cancellation of the 1922 agreement Anchor Hocking commenced to make resistant glass on Hartford machines. (Tr. 4189)

79. That there is no proof that the Howard Auto Blow patent read on the Ribbon Machine. (Exhibits C-5530 to C-5532)

80. That the plaintiff has failed to prove that any patent of Corning read on any machine or covered any formula licensed by Hartford and used by a licensee of Hartford under such license.

81. That the agreements embodied in the 1922 contracts (Exhibits 16 and 19) were closed in principal in July, 1920 while there were no negotiations pending between Owens and Hartford. (Admitted by Plaintiff, Tr. 2089)

82. That neither Empire nor Hartford-Fairmont at- [fol. 13629] tempted in any way to control or influence the conduct of the other in the manner in which it should exercise its rights in its field, exclusive or nonexclusive, under the 1916 contract.

83. That neither Corning nor Hartford-Empire attempted in any way to control or influence the conduct of the other in the manner in which it should exercise its rights in its field, exclusive or nonexclusive, under the 1922 contract.

84. That the defendant Corning did not conspire to acquire patents or patent rights covering the manufacture and licensing of glass making machinery. That it did not conspire to restrain interstate trade and commerce or attempt to monopolize such trade or commerce with respect to (a) patents covering the manufacturing and licensing of glass making machinery, or (b) the manufacture and distribution of such machinery, or (c) the manufacture, distribution and sale of glass products.

85. That the defendant Empire did not conspire to acquire patents covering the manufacture and licensing of glass making machinery. That it did not conspire to restrain interstate trade and commerce or to monopolize or attempt to monopolize such trade or commerce with respect to (a) patents covering the manufacturing and licensing of glass making machinery, or (b) the manufacture and distribution of such machinery, or (c) the manufacture, dis-[fol. 13630] tribution and sale of glass products.

86. That the exclusive rights contained in the 1916 and the 1922 contracts have been surrendered by Corning. (Exhibits H-5030 and H-5031)

87. That in reliance thereon and other surrender of exclusives, Hartford has removed all restrictions in its licenses.

88. That any exclusives given to Corning by the 1916 or 1922 contracts are irretrievably canceled.

89. That all questions involved with reference to the Corning or Empire groups are moot.

90. That divestiture of the Hartford-Empire stock now held by former stockholders of Empire would serve no useful purpose. (Exhibit C-5652)

91. That none of the following defendants, Alexander D. Falck, Amory Houghton, Arthur A. Houghton, Jr., Eugene C. Sullivan, William H. Curtiss, J. L. Peden and Arthur L. Day, participated in the formation or execution of con-

spiracies to restrain interstate trade and commerce or to monopolize or attempt to monopolize such trade or commerce with respect to (a) patents covering the manufacturing and licensing of glass making machinery or (b) the manufacture and distribution of such machinery or (c) the manufacture, distribution and sale of glass products.

[fol. 13631] 92. That the plaintiff has made no case against the defendant Eugene C. Sullivan.

93. That the plaintiff has made no case against the defendant James L. Peden.

94. That the plaintiff has made no case against the defendant William H. Curtiss.

95. That the plaintiff has made no case against the defendant Arthur L. Day.

96. That the plaintiff has made no case against the defendant Arthur A. Houghton, Jr.

97. That the plaintiff has made no case against the defendant Amory Houghton.

98. That the plaintiff has made no case against the defendant Alexander D. Falck.

99. That none of the acts alleged against the defendant Arthur L. Day were committed or alleged to have been committed within ten years of the bringing of this action. (Plaintiff's Brief, p. 428)

100. That none of the acts alleged against the defendant Eugene C. Sullivan were committed or alleged to have been committed within ten years of the bringing of this action. (Plaintiff's Brief, p. 426)

[fol. 13632] Conclusions of Law

1. That the good faith of the parties should be determined by the law as enunciated by the courts at or near the date of the acts complained of.

2. That unless said acts would have been declared illegal by the courts at the time of their occurrence, there is no evidence in the case that the parties will act in an way contrary to the antimonopoly statutes as interpreted by the latest decisions.

3. That to combine patents on formulas with patents on machines is not illegal.

4. That Corning as a corporation was not responsible for the acts of its common directors when they were acting as directors of Hartford-Empire.

5. That the 1916 contract between Empire and Hartford-Fairmont was legal.

6. That the 1922 Formation Agreement was legal.

7. That the 1922 agreement relating to patent rights and formulas was legal.

8. That the September 23, 1940 Concellation Agreement was legal.

9. That the assignments of the Peiler Punty patent, of the [fol. 13633] Howard Auto Blow patent and of the Smith Reissue patent were legal.

10. That the complaint should be dismissed as against Corning Glass Works, Empire Machine Company, Alexander D. Falck, Amory Houghton, Arthur A. Houghton, Jr., Eugene C. Sullivan, William H. Curtiss, James L. Peden and Arthur L. Day.

Respectfully submitted, McMahon, Webber & Hayward, Attorneys for Defendant, Corning Glass Works and Associated Defendants and Associate Defendants of Empire Machine Company, Nicholas Building, Toledo, Ohio.

[fol. 13634] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN CONNECTION WITH FINAL DETERMINATION OF CASE AS TO DEFENDANTS ISAAC J. COLLINS, J. D. DILWORTH, T. C. FULTON AND W. V. FISHER—Filed July 17, 1942

1. At the time of the filing of the complaint herein, (a) defendant I. J. Collins was president and a director of Anchor Hocking Glass Corporation, heretofore dismissed as

a defendant herein; (b) defendant William V. Fisher was a vice president and a director of Anchor Hocking Glass Corporation; (c) defendant Thomas C. Fulton was a vice president and a director of Anchor Hocking Glass Corporation; and (d) defendant J. D. Dilworth was a director of Anchor Hocking Glass Corporation.

2. The defendants William V. Fisher, Thomas C. Fulton and J. D. Dilworth have never been officers or directors of any other corporate defendant. Defendant I. J. Collins has never been an officer of any other corporate defendant, but was for a period of time prior to the filing of the complaint herein a director of the defendant Hartford-Empire Company, as hereinafter set forth.

3. (a) While not set forth in the complaint as a means whereby I. J. Collins is alleged to have joined or become a party to or to have participated in, furthered or carried [fol. 13635] out the alleged conspiracies and monopolies herein complained of, evidence was offered and received over objection concerning his having been for a period of time a director of Hartford, and concerning the fact that defendants Collins, Fulton, Fisher and Dilworth are stockholders of Hartford, and the court therefore includes herein its findings in connection therewith.

(b) Early in 1926, defendants I. J. Collins and T. C. Fulton and a Mr. Good, a business associate of said defendants, individually purchased as an investment a minority common stock interest in Monongah Glass Company, which latter company owned some of the common stock of the defendant Hartford.

On May 4, 1926, the defendant I. J. Collins became a member of the Board of Directors of the defendant Hartford at the request of the latter's president.

In 1927 the financial situation at Monongah became critical and a receivership and foreclosure was imminent. A plan of rehabilitation of Monongah's finances was embarked upon as a part of which the stock of the defendant Hartford-Empire owned by Monongah was sold. The detailed facts with respect thereto are set forth in paragraph 4(b) of the Findings of Fact and Conclusions of Law in connection with the granting of the motion of Anchor Hocking, et al. for dismissal, and are hereby adopted by reference thereto as the findings of fact herein in connection therewith. At said time, viz., in February, 1928, de-

fendant Collins individually purchased in his own behalf 2000 shares of said Hartford stock formerly owned by Monongah, and defendant Fulton individually purchased [fol. 13636] in his own behalf 1700 shares of said stock. Neither of said defendants has purchased any additional Hartford stock. Defendant Collins continued as a member of the Hartford Board of Directors until on or about December 31, 1937, when he resigned as such director, and he has not been such since. He was never a member of the executive or licensing committees of the Board of Directors of Hartford-Empire Company, which committees determined the licensing policies and the terms and conditions of licenses which were granted by that company. Such licensing policies had been adopted many years before Mr. Collins became a member of the Board of Directors. There is no evidence that Mr. Collins as a director ever approved of or participated in any of the alleged wrongful acts of the Hartford-Empire Company. He consistently opposed, during the time he was a director of Hartford and prior and subsequent thereto, the restrictive provisions inserted in the Hartford-Empire licenses and leases and the rates of royalties charged, and insisted that the licensees ought to be permitted under the licenses to make any articles they desired to on the patented machinery.

He took no part in the negotiations which resulted in the Hartford-Empire-Owens-Hazel-Atlas agreement of 1932, as a result of which Hazel-Atlas became a licensee of Hartford-Empire. Mr. Collins did not learn that Hazel-Atlas participated in the royalty income of the Hartford-Empire Company until the hearing in December, 1938, before the Temporary National Economic Committee. On learning such fact, he protested vigorously.

[fol. 13637] (c) At the time the complaint was filed herein defendant I. J. Collins personally owned 10,000 shares, defendant J. D. Dilworth personally owned 8,235 shares, defendant T. C. Fulton personally owned 3,600 shares, and defendant W. V. Fisher personally owned 450 shares of the stock of Hartford-Empire Company out of a total of 472,100 shares of stock issued and outstanding.

Conclusions of Law

1. None of the transactions referred to in the foregoing findings of fact, nor the facts set forth in connection therewith, nor the evidence introduced with respect thereto, in-

volve or disclose in so far as said defendants I. J. Collins, J. D. Dilworth, T. C. Fulton and W. V. Fisher are concerned any violation of any law of the United States or any connection with, participation in or furtherance of any combination, conspiracy or monopoly referred to in the complaint or involved in this cause, nor do they create any responsibility for the alleged acts, practices or policies of other defendants in connection therewith.

2. The evidence relating to I. J. Collins' position as a director of Hartford from May 4, 1926, to December 31, 1937, is beyond the scope of the pleadings in this cause or the issues raised thereby, but the admission of such evidence over the objection of said defendant was not prejudicial for the reason that such evidence does not disclose, and the facts set forth in connection with said transactions or the evidence introduced with respect thereto, does not [fol. 13638] involve or disclose in so far as said defendant is concerned any violation of any law of the United States or any connection with, participation in or furtherance of any combination, conspiracy or monopoly referred to in the complaint or involved in this cause, or create any responsibility for the alleged acts, practices or policies of other defendants in connection therewith.

3. (a) Under section 14 of the Clayton Act a stockholder as such is not responsible for or chargeable with any violation of said law by said corporation.

(b) As stockholders holding in the aggregate less than 5% of the stock of the Hartford-Empire Company, I. J. Collins, J. D. Dilworth, T. C. Fulton and W. V. Fisher are not responsible for or chargeable with any violation of any law of the United States by the Hartford-Empire Company.

4. The acts, practices, transactions or policies of I. J. Collins, J. D. Dilworth, T. C. Fulton and W. V. Fisher of which plaintiff complains herein occurred long prior to the time of filing the complaint in this cause, have not been repeated, resumed or continued, and have been abandoned, and there is no reasonable probability that they will be repeated, resumed or continued, hence there is no reason to grant as against said defendants the relief prayed for in the complaint herein.

5. The burden rests upon the plaintiff to establish by a fair preponderance of the evidence a right to relief against

each of the defendants I. J. Collins, J. D. Dilworth, T. C. Fulton and W. V. Fisher, including a showing by the [fol. 13639] degree of proof aforesaid that said defendants became or are connected with or have furthered or participated in or have otherwise become members of one or more of the alleged combinations, conspiracies or monopolies referred to in the complaint or involved in this cause in violation of the Sherman or Clayton Acts. This burden plaintiff has failed to discharge as to said defendants.

6. Final judgment should be entered herein dismissing the complaint as to the defendants I. J. Collins, J. D. Dilworth, T. C. Fulton and W. V. Fisher for the reason that the evidence is insufficient to show a right to relief as against said defendants or any of them, or that said defendants or any of them had any connection with or became a member of or in any wise participated in or furthered any combination, conspiracy or monopoly referred to in the complaint or involved in this cause, or in any wise became responsible for or chargeable with the alleged acts, policies or practices of other defendants in connection therewith.

Submitted by Hugh C. Laughlin. Welles, Kelsey, Coburn & Harrington, Counsel for Defendants Isaac J. Collins, J. D. Dilworth, T. C. Fulton and W. V. Fisher.

[fol. 13640] In United States District Court

[Title omitted]

Requested Findings of Fact and Conclusions of Law in Support of Judgment Granting Motion for Dismissal as to Defendant Anchor Hocking Glass Corporation and Certain Associated Individual Defendants—Lodged July 17, 1942

* * * * * * *

[fol. 13641] (b) Monongah Glass Company (herein referred to as "Monongah") was a pioneer glass manufacturer in the pressed ware field and was one of the early Hartford licensees, having taken a license about 1916. Early in 1926, defendant I. J. Collins and some of his business associates individually purchased as an investment, a minority

common stock interest in Monongah, which in January, 1927 they exchanged with Turner Glass Company for a minority common stock interest in and notes of that company. Mr. Collins became a director of Turner at the request of its president. In 1927 the financial situation at Monongah was highly precarious and a receivership and foreclosure was imminent. Monongah had a large preferred stock issue outstanding of approximately $715,000 as well as $900,000 in first mortgage bonds, which mortgage was in default. It owed over $500,000 in notes and accounts payable including about $50,000 to Hartford-Empire for past [fol. 13642] due royalties. The company was operating at a substantial loss and badly in need of additional working capital.

Turner Glass Company owned all the Monongah common stock at this time. One H. W. Hartley was the president and a large stockholder of Turner, and he and the other officers and directors of Turner and Monongah embarked upon a program of raising the required cash for Monongah by the sale of such of those assets of Monongah "as were not needed in the manufacture of containers", and to that end the Monongah opalware busines was sold to Hazel-Atlas Glass Company for $150,000. At that time Hazel-Atlas Glass Company was not a licensee of Hartford or a user of its machinery, but was a competitor of Hartford in the patent and glass machinery field, and in active litigation with Hartford as to the validity of their respective patents and the alleged infringement thereof by the machinery and equipment respectively manufactured by each, and was in active competition with Owens-Illinois in the glassware manufacturing field.

To the same end other non-container manufacturing assets of Monongah were sold, including the stem ware business and the Consumer Lime Company and certain unused real estate was appraised and offered for sale.

Among the other non-container manufacturing assets of Monongah there was approximately 15,000 shares of Hartford-Empire stock, which stock was pledged under the mortgage securing the defaulted Monongah bonds. The Hartford-Empire stock was salable, but was issued under a so-called preemption agreement, by the terms of which in the event of its sale it had to be offered first to certain representatives of and for the benefit of the original stockholders of the Hartford-Empire Company.

Likewise, by reason of said stock being pledged under the mortgage securing Monongah's defaulted bonds, the sale price and other terms and conditions thereof had to be approved by the representatives of the Monongah bondholders. The bond issue had been sold to the public by Mackubin Goodrich & Company, investment bankers of Baltimore, Maryland, and Mr. Legg and Mr. Eager of that firm represented the bondholders in the negotiations with respect to the sale of the stock.

[fol. 13643] After prolonged but unsuccessful efforts on the part of the Turner and Monongah officers and directors and the representatives of the Monongah bondholder group to sell the stock at a higher price, on November 7, 1927, the investment banking house of Nelson Rodgers, Inc. made a firm offer of $35 per share, which was conditioned upon (a) ninety percent of the outstanding bonds approving the sale, (b) the making of certain changes in the sinking fund requirements of the mortgage indenture, and (c) the use of the proceeds of the sale in retiring one-half of the outstanding bonds ($450,000) and the balance as working capital, all designed to make possible the rehabilitation and continued operation of Monongah Glass Company. The offer was accepted and the sale duly authorized and approved in accordance therewith by the directors of Monongah, by the stockholders of Monongah and by the holders of over 92% of the outstanding Monongah bonds. There were no other purchasers for the stock at that price at that time and the offer was the best and only available one. The stock had been previously offered to Hazel-Atlas Glass Company, who declined to make an offer of purchase because of its pending litigation with Hartford, and efforts had also been made to organize a syndicate for the sale of the stock without success.

In accordance with the preemption agreement, the designated representatives of the original stockholders of the Hartford-Empire Company were notified of the offer and the preemptive rights hereinbefore referred to were exercised to the extent of purchasing approximately 5,000 shares of the stock under the terms of the offer. On February 11, 1928, Nelson Rodgers, Inc. took up the balance of the stock under the terms of its offer. Thereafter, defendant I. J. Collins individually purchased 2000 shares of said stock from Nelson Rodgers, Inc. and defendant T. C. Fulton in-

dividually purchased 1700 shares of said stock from Nelson Rodgers, Inc.

The purchase by defendant Collins and by defendant Fulton were each individual purchases in their own behalf and neither Hocking nor any other corporation with which either defendant Collins or defendant Fulton had been or now are associated had any interest or part therein, or has ever received or participated in any of the dividends thereon.

[fol. 13644] The proceeds received from the sale of this stock were used to cure the mortgage default and pay off half ($437,500) of the outstanding Monongah bonds and to pay other company debts and for working capital, and Monongah was thereby enabled to continue until late in 1931 as a going concern. The sales of the Hartford-Empire stock and of other non-manufacturing assets of Monongah were made with the approval of all those financially interested in the company and solely for the purpose of improving and rehabilitating the financial condition of Monongah and to keep it operating as a going concern, and were necessary to accomplish said purposes. All of said assets were sold at a fair and reasonable and the best obtainable price that could be secured, and had no connection with and were entirely aside and apart from the alleged monopolies and conspiracies involved herein and in no wise restrained competition or trade.

* * * * * * *

[fol. 13645] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

REQUESTED FINDINGS OF FACT IN REFERENCE TO DEFENDANT THATCHER MANUFACTURING COMPANY—Filed July 17, 1942

1. In or about the year 1908, defendant Thatcher Manufacturing Company acquired from the Owens company an exclusive license for the use of the Owens suction machine in the production of milk bottles, said Owens company guaranteeing that it would not license other milk-bottle producers on this machine. Said license was terminated

by mutual agreement of licensor and licensee on or about July 22, 1930.

2. In 1916 the Hartford company licensed four companies to produce milk bottles on its first, the so-called "paddle" feeder machines. In or about 1920 defendant Thatcher Manufacturing Company acquired the assets of three of these companies, namely, Essex Glass Company, Travis Glass Company, and Lockport Glass Company, for $1,637,000; and in the same year said defendant Thatcher entered into an agreement with the fourth licensee, namely, J. T. A. Hamilton Company, by which said defendant for $100,000 acquired title to the machinery used by the Hamilton company, and the Hamilton company agreed, for the period of ten years from and after January 1, 1920, to limit its production to milk bottles to be distributed in Allegheny County, Pennsylvania. This agreement had been in force since 1920 and had not been cancelled, in whole or in part, at the time of the commencement of this action, but there is no evidence that any effort had been made to enforce the [fol. 13646] same for a long time prior thereto; and since on or about October 8, 1940, said Hamilton company has had a license directly from the Hartford company and defendant Thatcher Manufacturing Company has had no interest in the equipment of said Hamilton company and said contract between the Hamilton company and Thatcher Manufacturing Company has not been in force or effect.

3. On or about December 8, 1920, the Hartford company agreed with Thatcher Manufacturing Company not to license any other milk bottle producers in the United States to use Hartford's "paddle" feeder.

4. During the period from 1922 to 1928 Thatcher Manufacturing Company secured licenses from the Hartford company to manufacture milk bottles on another type of feeder which Hartford was developing, namely, the so-called "single feeder." At various times, particularly in 1925 when Hartford's single feeder was perfected, Thatcher Manufacturing Company complained to the Hartford company that it was entitled to an exclusive license to use the Hartford single feeder machines for milk bottles. In 1926 the Hartford company assured Thatcher Manufacturing Company that it would be given "every consideration" in the granting of other licenses and that such licenses would

not be granted without considering Thatcher's "side of the case."

5. Under date of April 13, 1928, the Hartford company and Thatcher Manufacturing Company entered into an agreement entitled "Consolidated Agreement", by the terms of which the Hartford company granted Thatcher Manufacturing Company an exclusive right to use Hartford's paddle needle feeders for the manufacture of milk bottles, and Thatcher Manufacturing Company was given the right to lease as many Hartford single feeders as it desired. In addition, Thatcher Manufacturing Company was granted an option on any exclusive licenses that should be offered by the Hartford company for milk-bottle production on single-feeder equipment.

[fol. 13647] 6. In December 1932 Thatcher Manufacturing Company acquired the milk bottle business and certain machinery and license rights of Knox Glass Bottle Company, and paid therefor the amounts set forth in paragraph 135 of the bill of complaint being (1) $75,000. in cash, (2) $175,000. in milk bottles which the Knox company sold for cash in about the same amount; and (3) 15,000 shares of common stock of Thatcher Manufacturing Company having an aggregate market value of approximately $105,000. Prior thereto the Hartford company had granted a license to the Knox company which provided that Knox's annual production of milk bottles should be limited to 75,000 gross although, prior thereto, the Knox company had been manufacturing and selling on an average more than 75,000 gross milk bottles per year. This limitation was not immediately enforced but the requirement of compliance with it was anticipated by Roy R. Underwood, president of the Knox company, and he anticipated that the manufacture of milk bottles, by his company, on such restricted basis would not be satisfactory and profitable and, having reached that conclusion, he voluntarily initiated negotiations with the chief executive of Thatcher Manufacturing Company, seeking and making an appointment with him, and making a proposal to him, resulting in negotiations culminating in the purchasing by Thatcher Manufacturing Company of the milk bottle business and certain machinery and license rights of Knox Glass Bottle Company, as above set forth and upon the terms above stated.

7. In 1933 Thatcher Manufacturing Company purchased the plant of Peerless Glass Company, a manufacturer and distributor of milk bottles. It is not alleged in the bill of complaint that said Peerless Glass Company was a competitor of Thatcher Manufacturing Company. Certain exhibits and correspondence have been received in evidence which plaintiff has relied upon in argument to show that said Peerless Glass Company was a competitor of Thatcher Manufacturing Company. It appears from said exhibits and [fol. 13648] correspondence that said Peerless Glass Company was not a licensee under the patents of Hartford-Empire Company, that its machinery and equipment for the manufacture of milk bottles infringed Hartford's patents, and that said Peerless Glass Company was liable for infringement damages in a large amount of money, approximately $200,000. From said exhibits and correspondence it appears that said Peerless Glass Company was not a competitor of Thatcher Manufacturing Company in the manufacture of milk bottles on machinery licensed under Hartford's patents.

8. On consideration of this question the court finds that there is neither pleading nor proof that Peerless Glass Company was a competitor, or such a competitor, of Thatcher Manufacturing Company, in the manufacture of milk bottles, as to prevent Thatcher Manufacturing Company from lawfully purchasing the plant of Peerless Glass Company or to much such purchase a restraint of trade.

9. By agreement of January 1, 1936, between Thatcher Manufacturing Company and the Hartford company the license relations between the Hartford company and Thatcher Manufacturing Company were modified, renewed and continued. By said agreement Thatcher Manufacturing Company was given the exclusive right to use the Hartford "Two Table" milk bottle forming machine and the right to obtain as many additional Hartford "single" feeders as it desired at a rate no higher than the lowest rate charged to the other licensees. It is provided by section 6 thereof that this agreement, unless sooner revoked or terminated as provided elsewhere therein, should remain in force for the period of eight years from the date thereof; and there is a provision with reference to the renewal. It is provided by section 23 of the general agreement of January 1, 1936, in substance, that Thatcher Manufacturing

Company agrees, and consents that the Hartford company has and shall continue to have the full, unrestricted and entire legal, equitable and moral right to license to any [fol. 13649] parties, persons or corporations whatsoever, for the production of milk and cream bottles, or either thereof, any and all forms of glass feeding and glass forming machinery, or either thereof, other than the two table milk bottle forming machine described in a schedule annexed thereto, and by section 24, thereof that during continuance of said agreement Thatcher Manufacturing Company shall have the non-exclusive right to take and license from the Hartford company, for the making and handling of milk and cream bottles, such feeding and forming machines and such conveyors, take-outs, stackers and other apparatus for handling milk and cream bottles as might thereafter be developed and controlled and placed in commercial use by the Hartford company.

10. By reason of the action of Hartford-Empire Company, taken since the commencement of this action, removing all restrictions from licenses of the kind and character mentioned in paragraphs 139 and 140 of the bill of complaint, the matters therein contained have become immaterial, as no injunction with reference thereto would be necessary as to the defendant Thatcher Manufacturing Company.

11. By reason of the foregoing the matters contained in paragraph 141 of the bill of complaint, all of which have been denied by Thatcher Manufacturing Company for want of knowledge sufficient to form a belief in reference thereto, and which are stated to have occurred some time prior to January 1, 1936, the date of the said general agreement showing the contractual relations existing between the Hartford-Empire Company and Thatcher Manufacturing Company at the commencement of this action, have become immaterial and do not require determination by the court.

[fol. 13650] 12. Prior to 1931 Turner Glass Company of Indianapolis, Indiana, a licensee of Hartford-Empire Company, was put into receivership by Hartford for non-payment of royalties. In 1931 Hocking Glass Company and Thatcher Manufacturing Company arranged for the organization of General Glass Company to acquire the assets of Turner Glass Company and one-half of the stock of Gen-

eral Glass Company was acquired by Thatcher Manufacturing Company and one-half by Hocking Glass Company. The acquisition by Thatcher Manufacturing Company, by reason of its half interest in General Glass, of a half interest in the former Turner Glass plants, was the result of open bidding at a Receiver's sale, duly confirmed by the United States District Court of the Southern District of Indiana. In 1935 Thatcher Manufacturing Company sold its interest in General Glass Company to Hocking Glass Company.

13. As to the individual defendants named in paragraph 22 of the bill of complaint, except such of them as have been dismissed, the court finds that they were officers or directors of Thatcher Manufacturing Company at the time of the commencement of this action, that they had participated in the direction and management of defendant Thatcher, and that they had approved, authorized, ordered and done some or all of the acts heretofore found by the court to have been performed by defendant Thatcher Manufacturing Company except that they, or any of them, had not so approved, authorized, ordered or done the same except as an officer or director of defendant Thatcher Manufacturing Company.

Conclusions of Law

[fol. 13651] (The following proposed conclusions of law are numbered according to relief requested on pages 12 and 13 of memorandum submitted on or about September 10, 1940, entitled Summary of Practices of Defendants and Relief Requested.)

1. The 1928 agreement between Thatcher and Hartford was superseded by the General Agreement of January 1, 1936, providing for a non-exclusive license for feeders and an exclusive license for the two-table milk bottle machine. The court finds that said contract was legal and rendered immaterial various prior matters connected with the licensing arrangement between Hartford-Empire Company and Thatcher Manufacturing Company. As to said exclusive license for said milk bottle forming machine the court finds that Thatcher Manufacturing Company has offered to waive its exclusive rights therein making said license non-exclusive to continue for the period provided for in said General Agreement on condition that no other relief is found necessary against said defendant.

2. The court finds that the 1920 agreement between Thatcher Manufacturing Company and J. T. & A. Hamilton Company expired according to its terms some years prior to the commencement of this action, that J. T. & A. Hamilton Company continued to use the equipment referred to in said contract until after the commencement of this action, but that since on or about October 8, 1940, J. T. & A. Hamilton Company has had license rights directly from Hartford-Empire Company and that said contract with Thatcher Manufacturing Company has not since said date been of any force or effect.

3. The court finds that the 1932 agreement between Thatcher Manufacturing Company and Knox Glass Bottle Company was not an illegal contract or in restraint of trade, and that the agreement of Knox Glass Bottle Company not to engage in the manufacture and distribution of milk bottles for a period of ten years, which was collateral thereto, will soon expire by limitation. The court further finds that Thatcher Manufacturing Company is willing to [fol. 13652] release Knox Glass Bottle Company from any agreement not to engage in the manufacture and distribution of milk bottles on condition that no other relief is found necessary against said defendant.

4. The court finds that no injunction against further participation by Thatcher Manufacturing Company in the licensing policy of Hartford-Empire Company, or its successors, is necessary and that such injunctions, if any, as the court may deem proper to grant against Hartford-Empire Company will afford adequate relief herein.

5. The court finds that no injunction restraining Thatcher Manufacturing Company and its officers, directors, agents, and employees, is necessary herein.

6. The court finds that the purchase by Thatcher Manufacturing Company of the plant of Peerless Glass Company was not unlawful and did not involve any restraint of trade or other element which would require any relief herein.

7. The court finds that the acquisition of the Turner plants by General Glass Company and the participation therein by Thatcher Manufacturing Company and the acquisition by Thatcher Manufacturing Company of an inter-

est in said Turner plants, were legal and did not involve any restraint of trade.

[fol. 13653] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW BY THE DEFENDANTS, GLASS CONTAINER ASSOCIATION, STEVENSON AND ACKERMAN—Filed July 18, 1942

Now come the defendants, Glass Container Association of America, Inc., Charles R. Stevenson and Emory G. Ackerman, and, each separately, respectfully request the court, in connection with any judgment it may enter as to them in this case, to state its findings of fact and conclusions of law as follows:

Findings Of Fact

1. The defendant, Glass Container Association of America, Inc. (hereinafter styled the GCA), was incorporated in 1919 under the laws of Delaware. The defendant Stevenson became business manager of the GCA in May, 1928, and still holds that position. The defendant Ackerman was employed as assistant business manager in 1929 and resigned on December 31, 1940, to become president of the Thatcher Manufacturing Company.

2. The membership of the GCA includes manufacturers of glass containers and of allied articles, such as caps and closures, and certain companies which supply raw materials and equipment to the glass container manufacturers; it is supported financially by assessments upon its membership, in most cases based upon a percentage of their sales, [fol. 13654] but, in the case of companies other than manufacturers of glass containers, where the percentage of net sales method would work out inequitably, an arbitrary amount is agreed upon; prior to 1933, the membership of the GCA comprised manufacturers of about 82 per cent of the glass containers made in the United States; during the period of the NRA Code and thereafter, its membership has

included the makers of more than 96 per cent of such containers.

3. The function of the GCA has been the promotion of the glass container industry, with particular emphasis upon improving the quality of its product and enlarging the market therefor; it has made substantial expenditures in carrying out those purposes, including the maintenance of a research laboratory to develop methods of processing food products in glass; advertising glass containers and conducting campaigns to point out their advantages over competitive containers made of other materials; the conduct of research as to new uses for glass containers including the maintenance of a glass kitchen for this purpose; the opposition of laws and regulations restricting the use of glass for certain purposes, as, for instance, storage of motor oils and other combustibles; the representation of the industry in its relationship with the railroads to secure more favorable rates and classifications for its products and raw materials; the standardization of bottles finishes (the part of the bottle which receives the cap or closure) to permit different persons successfully to manufacture bottles, caps and closures to specifications and thereby to avoid wastage of the products packed; the standardization of the bottles themselves to improve strength, to lessen weight, and to fit various types of packaging machinery; and the conduct of a statistical system which assembles information concerning the quantity of glass containers produced, shipped, and on hand, for the information of the membership and of the public generally.

[fol. 13655] 4. The defendants, the GCA, Stevenson and Ackerman were not parties to a conspiracy to monopolize patents on glass making machinery and the manufacture of such machinery and thereby to monopolize and restrain the manufacture and distribution of various types of glass products and glass containers as is charged in the complaint herein.

5. The defendants, the GCA, Stevenson and Ackerman did not, in furtherance of the conspiracy charged, at the request of the defendant Hartford-Empire Company, or otherwise, improperly dissuade or attempt to dissuade new firms or corporations from entering the glass business; it was the policy of the GCA to give to anyone considering

entering the glass business all of the pertinent facts and figures it had relative to the industry which might be considered essential in determining whether a substantial investment should be made therein, and it did not give to any prospective newcomer in the industry any information which was not in accord with the facts.

6. The defendants, the GCA, Stevenson and Ackerman did not, in furtherance of the conspiracy charged, or otherwise, improperly prevent or seek to prevent the expansion of the glass industry.

7. During the period from 1928 to 1935, the glass industry never operated at as high a ratio to active capacity as sixty per cent, and in the year 1932 the ratio dropped below fifty per cent and, if potential capacity (including active furnaces and furnaces that could be made active within a sixty day period) be taken into account, the operating ratio was correspondingly lower, and fell below forty per cent in 1932; from 1928 to 1939, the industry's total sales of glass containers increased 154.55%; as a group, the small companies (those which produced less than 200,000 gross in 1928) increased their sales 240.79%; the medium-sized companies (those which shipped from 200,000 to 1,000,000 [fol. 13656] gross in 1928) 240.93%, and the large companies (those which shipped more than 1,000,000 gross in 1928) only 132.37%; total industry volume increased from 1928 to 1939 by 17,423,323 gross, of which 17.3% went to the small companies, 35.5% to the medium-sized companies, and 47.2% to the large companies.

8. The defendants, the GCA, Stevenson and Ackerman did not endeavor, in furtherance of the conspiracy charged, or otherwise, to enforce a system of price leadership in the glass industry, and they did not concern themselves with the current prices for glass containers.

9. In 1925, the GCA began to assemble and to distribute to its members certain statistical data based upon information received from its members; the monthly reports which the GCA receives from each member show the number of gross of bottles of various classes which it had produced and had shipped during the preceding month and the number of gross of bottles on hand at the end of that month, but they do not now contain, nor have they ever contained,

any statement of the dollar value of production, shipments, or stocks on hand, or any other information regarding the price of the merchandise produced, shipped or stocked; they are assembled by the GCA, which re-distributes to its membership, once a month, corresponding figures of production, shipments, and stocks on hand for the industry as a whole; the report which a particular member receives works out the percentage relationship between his own production, shipments, and stocks on hand and the corresponding industry totals, but, except to the extent that members may voluntarily exchange this information, there is no disclosure of the figures of one company to the representatives of any other company; in addition to this, the GCA receives an annual report from each member stating the total melting area of its furnaces, from which the GCA [fol. 13657] computes the theoretical capacity of the industry on the basis of data concerning the number of square feet of melting area required to produce a ton of glass per day and the number of days per year during which the average furnace is in operation; the capacity figures thus developed, both for the individual company and for the industry as a whole, are then related in percentage to the production and shipment figures in the monthly reports distributed to the members during the ensuing year.

10. A typical statistical statement, such as was sent out by the GCA to its members from 1928 until July, 1939 (Government's Exhibit 600) is as follows:

(Here follows 1 photolithograph, side folio 13657a)

[fol. 13658] 11. After the enactment of the NRA in 1933, a Code was promulgated for the glass industry providing in effect that, so long as the industry rate of operation to capacity was less than 70 per cent, a system of allocating the available business should be enforced; the Code Authority was to formulate a plan for the allocation thereof which after approval by Government authority and subject to a right of appeal by each member of the industry, was to be compulsory and would forbid an individual company to manufacture a larger volume than was assigned to it; thereupon, the Code Authority made a statistical survey of the industry and tentatively assigned to each company a percentage of the total industry business on the basis of its past shipments and present capacity; individual hearings were held to consider each company's criticism of the percentage assigned to it, and, as a result thereof, certain revisions were made and a revised percentage was sent to each company with the request that it agree thereto; only five or six assents were ever received by the Code Authority, the other companies contending that their allocations were too low; while these hearings and readjustments were taking place, negotiations were being carried on with the Government authorities to secure their approval of the system, as required by Schedule A of the Code, which, however, had not been given when the Schechter case ended the NRA; for a period of several months after the NRA was declared unconstitutional on May 25, 1935, there was a discussion of possible substitutes for the invalidated Code from which nothing resulted.

12. The members of the GCA did not in fact adhere to their percentage forecasts, but, on the contrary, their actual shipments departed widely therefrom; in 1933 (the last full year unaffected by the Code), after the system of publishing forecasts had been in effect five years, 25 companies were reporting their general line sales to the GCA; of these, the sales of only 5 were within 10 per cent, plus [fol. 13659] or minus, of their percentage forecasts; of the remaining 20, 7 departed from their forecasts by more than 10 per cent, 8 departed therefrom by more than 25 per cent, and 5 by more than 50 per cent; from 1935 to 1939, no members of the GCA gave any heed to the percentage forecasts; by 1939, of 27 companies reporting their general line shipments, only 5 companies shipped a volume which

was within 10 per cent, plus or minus, of their forecast volume, 8 companies were between 10 and 25 per cent away, 6 companies were between 25 and 50 per cent away, 3 companies were between 50 and 100 per cent away, and the remaining 5 companies were more than 100 per cent away, and individual variations went as high as 287 per cent; after the Code was invalidated in May, 1935, the percentage forecasts which had been calculated by the Code Authority were mechanically reproduced, month by month by the GCA on its statistical statements similar to Government's Exhibit 600 (finding 10 hereof) without change save in two minor instances.

13. There never was, before or after the Code, any agreement or understanding, express or implied, by or among the GCA and its members or the members themselves, that they would abide by their forecast figures, nor any concert of action to that end; there was no coercion by the defendants, the GCA, Stevenson and Ackerman, and no attempt by them to enforce the forecast figures or to compel the members of the GCA to adhere thereto; on the contrary, each member of the GCA was at all times wholly free to exercise its own individual and independent judgment as to what use, if any, it would make the forecast figures and statistical data distributed by the GCA in its own individual business; no moral sanctions were employed to enforce or induce adherence to the forecast figures.

[fol. 13660] 14. By 1939, the so-called percentage forecasts and the industry forecast had ceased to have any relation to reality or to the actual performance of the industry; no member of the GCA was giving any heed to them in the operation of its own business, and the GCA staff had had under consideration for some time the revision of the statistical form to eliminate them; in May or June of 1939, the Armstrong Cork Company, which had been a member of the GCA, resigned its membership, and, upon inquiry as to the reason therefor, stated that its legal counsel had questioned the propriety of the publication by the GCA of the percentage forecasts; thereupon, at the invitation of the GCA, counsel for the Armstrong Company made a review of its activities, and stated that the forecasts as in the form then in use looked suspicious and might be incorrectly interpreted; the GCA then discontinued the distribution of the statistical information in the form theretofore

used and hereinbefore described and adopted the present form of statistical statement which eliminates all reference to forecasts, and confines itself to data disclosing the actual performance of the individual member in question; the Armstrong Company thereupon withdrew its resignation; this change took place in July of 1939, about six months before the present suit was filed, and before the GCA had any intimation that it would be filed.

CONCLUSIONS OF LAW

1. The defendants, the GCA, Stevenson and Ackerman were not parties to the conspiracy charged in the complaint herein or to any phase or aspect thereof.

2. The defendants, the GCA, Stevenson and Ackerman did not, improperly or unlawfully, dissuade or attempt to dissuade new firms and corporations from entering the glass industry; nor did they prevent or restrict the expansion thereof or attempt so to do.

[fol. 13661] 3. The defendants, GCA, Stevenson and Ackerman did not, improperly or unlawfully, endeavor to enforce a system of price leadership in the glass industry.

4. The defendants, the GCA, Stevenson and Ackerman did not, improperly or unlawfully, restrict nor attempt to restrict the production of the glass industry, nor did they use or employ a system of quotas or forecasts to that end.

5. The distribution of statistical information by the GCA disclosing the individual member's percentage forecast, such as is set forth in finding of fact number 10, was wholly abandoned in July, 1939, five months before this action was commenced.

6. The complaint herein should be dismissed in its entirety as to the defendants, the GCA, Stevenson and Ackerman.

Luther Day, by /s/ Rufus S. Day, Solicitors for the defendants, Glass Container Association of America, Inc., Charles R. Stevenson and Emory G. Ackerman.

Jones, Day, Cockley and Reavis, of Counsel.

A copy of the within Request for Findings of Fact and Conclusion of Law was on this day, July 17, 1942, duly deposited in the mails by me, addressed to Hon. Samuel S.

Isseks, Special Assistant of the Attorney General of the United States, Federal Building, Toledo, Ohio.

/s/ Rufus S. Day, Attorney for defendants, Glass Container Association of America, Inc., Charles R. Stevenson and Emory G. Ackerman.

[fol. 13662] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

HAZEL-ATLAS REQUESTS FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed July 18, 1942

The below proposed findings of fact and conclusions of law are submitted in behalf of the Hazel-Atlas defendants, namely, Hazel-Atlas Glass Company, J. Harrison McNash, Walter H. McClure, George S. Quay, L. C. Paul, H. W. Gee, William W. Holloway, and B. H. Seabright. (The suit has been dismissed as to former Hazel-Atlas defendants Metzner, Jones and Laughlin.)

FINDINGS OF FACT

1. The Hazel Company is, and it (including its predecessors) for many years has been, engaged in the manufacture of glass containers.

Comment.

Not disputed.

2. The Hazel Company (including its predecessors), as an incident of its glassware manufacturing business, has since prior to 1900 been inventing and building its own machines for use in its manufacture of glassware. Such independent invention and development by Hazel contributed to the progress of the glassware machinery art. For example:—

Forming machines of Hazel invention were commercially operated by it prior to 1900, more than 17 years before either the Lynch Company, one of the oldest machine companies, put one out or before the large and powerful Owens Company, originator of the successful suction machine, op-

erated one; and more than 23 years before the Hartford Company installed one for commercial operation (Hazel brief, p. 9); in contrast the Owens forming machine (Graham) which Owens endeavored to develop and license to its competitors was unsuccessful, and Owens had to pay damages because of its failure (plff.'s main brief, pp. 78, 79; La France, 9857-9859).

[fol. 13663] In 1906, Hazel began using its stationary plug feeder, the so-called Brooke feeder; and in 1914 invented and applied for a patent for a reciprocating plunger feeder; and various types of feeders were successfully operated by Hazel before 1920; in contrast the Owens Company attempted to develop a plunger feeder, spending about $1,000,000 around 1916, but later abandoned its feeders for Hartford feeders; and the Hartford Company itself did not install a plunger feeder until 1922 (Hazel brief, pp. 9 through 11).

Comment.

Not disputed.

3. The Hazel Company is the only Hartford licensee which does not use Hartford plunger feeders (except for one semi-experimental feeder), and which uses plunger feeders and forming machines invented and manufactured by itself, and which is spending large sums of money in the development of new types of feeders and forming machines.

Only the Hazel Company, of all the Hartford licensees, is, and for many years past has been, maintaining a large staff of engineers, exclusively engaged in research and engineering, for the purpose of inventing and perfecting new and useful feeder and forming machines. Even the Owens Company, spending millions on suction machines, depends upon the Hartford Company for its gob feed production, including feeders and engineering service (Hazel brief, p. 10, *et seq.*).

Comment.

Not disputed.

4. The time and expense necessary to producing a commercially satisfactory glass making machine are very great. The Hazel Company spends about $250,000 a year, employing about 70 engineers, for research and development; the

Hartford Company worked for years on the now obsolete paddle and paddle needle feeders before putting out a [fol. 13664] feeder in 1922, and it also spent many years in developing its 12 and I. S. forming machines (Hazel brief, pp. 11, 40, 41).

Comment.

Not disputed.

5. The Hazel Company has developed many inventors who obtained their early training in its plants, including the Proegers who later joined the Owens Company, Ed Miller of the Miller forming machine company, Frank O'Neill of the O'Neill forming machine company, George Howard of the Howard Company, Bridges the chief engineer of the Lynch Company, etc. (Hazel brief, p. 11).

Comment.

Not disputed.

6. The Hazel Company never has been in the business of selling or leasing feeders or forming machines, and it never has sold or leased either (Hazel brief, p. 11).

The Hartford-Hazel agreements complained of here do not relate to any machines other than feeders and forming machines.

Comment.

Not now disputed.

7. From 1926 to May, 1932, the Hazel Company was defending itself against Hartford patents.

On January 14 and February 26, 1926, the Hartford Company wrote the Hazel Company that it was infringing a Steimer patent, 1,564,909, and a "phase change" patent, Peiler, 1,573,742 (Hazel Ex. 5079); in May, 1926 Hartford sued the Kearns-Gorsuch Bottle Company (a wholly owned Hazel subsidiary) in Columbus, Ohio, in the Sixth Circuit, on these patents, later adding two more patents to the suit; in June, 1928 Hartford sued the Hazel Company in Pitts- [fol. 13665] burgh in the Third Circuit on still another patent, the so-called "stuffing" patent (Peiler 1,655,391); in May, 1930, Hartford threatened another patent suit, probably in the Tenth Circuit; and in January, 1931, Hartford filed in the Fourth Circuit another suit against Hazel Com-

pany on some of the patents involved in the *Kearns-Gorsuch* suit.

The Sixth Circuit and the Third Circuit suits were strenuously defended by the Hazel Company, through decisions in the respective Circuit Courts of Appeal, on May 5, 1932 in the Third Circuit, *Hartford* v. *Hazel*, 59 F. 2d 399, and a week later, on May 12, in the Sixth Circuit, *Hartford* v. *Nivison-Weiskopf, Kearns-Gorsuch, et al.*, 58 F. 2d 701 (Hazel brief, pp. 13-15).

Comment.

Not disputed.

8. Although in the Sixth Circuit litigation, the Hazel Company was successful in destroying three of the Hartford patents and so limiting the fourth patent as to make it unimportant, in the Third Circuit litigation the patent there in suit was broadly sustained as valid and as covering the Hazel feeders (Hazel brief, pp. 13-15).

Comment.

Not disputed.

9. There was no certainty that the Third Circuit Court of Appeals would grant a petition for rehearing and reverse itself, or that the Supreme Court would grant a petition for certiorari and then reverse the Court of Appeals.

The majority opinion of the Court of Appeals was lengthy and positive, the dissenting opinion was equally positive; it was apparent that the case had been very carefully considered by the Court and that its mind had been made up. Two or three years later the same Court sustained the same patent in a suit against the Shawkee Company, which had had the benefit of all the defense record and arguments in the [fol. 13666] *Hazel-Atlas* case, and the Court even extended the scope of the patent to cover a different type of feeder, *Hartford* v. *Shawkee*, 68 F. 2d 726; the Court thereafter denied a petition for rehearing, 73 F. 2d 1013; and the Supreme Court denied three petitions for certiorari, 292 U. S. 640, 293 U. S. 600, 296 U. S. 635 (Hazel brief, p. 17).

Comment.

Not disputed.

10. Immediately after the Third Circuit decision, negotiations commenced between the Hartford and Hazel com-

panies, which resulted in cross-license agreements running until the Third Circuit patent expired on January 3, 1945. These agreements were contained in a General License Agreement and a Supplemental License Agreement, each dated July 1, 1932 (Hazel brief, p. 21).

Comment.

Not disputed.

11. The Hartford license to Hazel was

(a) Non-exclusive. It was merely a promise by Hartford not to sue Hazel for patent infringement with respect to the matters licensed, and Hartford was as free to grant licenses after the Hazel license as it was before.

(b) Limited, or restricted, to feeders and forming machines, and to their use for certain specified lines of ware. Thus Hazel had an immunity from suit only in certain specified fields.

Hazel did not agree that it would not manufacture in the unlicensed fields. The statement in the license that certain "articles are expressly excluded and shall not be produced *under this General License Agreement*" (General License Agreement, Schedule A), is a limitation upon the scope of the license only, and is not an agreement that the [fol. 13667] certain articles "shall not be produced" but a recognition that Hazel is as free as before to produce them outside the license (Hazel brief, p. 24).

(c) An "inventions" license, under which Hazel could build and own its machines. Hazel had been manufacturing glassware by the use of its own machines, which it designed and built, for more than thirty years before 1932; it had a large organization of trained and experienced engineers and workmen engaged in such development; and the license merely allowed the Hazel Company to continue doing what it had been doing for many years (Hazel brief, pp. 26-8). (The license also was non-exclusive, in this respect and left Hartford entirely free to grant such "inventions" (Hazel brief, p. 29) licenses to any others; and Hartford subsequently granted such a license to Ball Brothers, plff.'s brief, p. 199.)

(d) A "most favored nation" license agreement, *i.e.*, Hartford agreed that Hazel would have the benefit of more

favorable terms Hartford might grant to others. (Here too the license was non-exclusive and Hartford retained full rights to so agree with others and subsequently did grant Ball Brothers a "most favored nation" license, plff.'s brief, p. 199.)

Comment.

Not disputed.

12. Hazel granted to Hartford, with right to sublicense others and receive royalties, a non-exclusive license, running to January 3, 1945, to use any inventions, improvements, and engineering technique and knowledge, whether or not patented, and also a release, for which Hartford agreed to pay Hazel one-third of Hartford's income from royalties, etc., after first deducting $850,000 a year. (Hazel did not restrict itself from granting such licenses to others, [fol. 13668] Hazel remaining as free before as after the license to do anything with respect to these matters, Hazel brief, p. 30.)

Comment.

Not disputed.

13. Prior to the July 1932 agreements, the Hazel Company had

(a) Valuable patented inventions, and expected to make more.

(b) Valuable engineering experience and knowledge.

(c) A valuable claim against Hartford and Owens on the Lott patents.

Comment.

This is disputed by plaintiff, at least quantitatively as to the patents and engineering knowledge, and wholly as to the Lott claim.

The patents and engineering knowledge are dealt with in plaintiff's brief (p. 200, et seq.), and in the Hazel brief (pp. 38 through 43), the reply brief of plaintiff not referring to those subjects, except to repeat (p. 102) the assertion in its main brief "that there was no conflict of patent claims between Hartford and Hazel." (There was a conflict, as pointed out in the Hazel brief, p. 14).

The evidence supporting the above proposed finding with respect to the Lott claim (Hazel brief, pp. 35-38) may be briefly listed, as follows:

(a) By a 1909 agreement (Ex. 909), the Hazel Company purchased certain exclusive rights to the glass making inventions and improvements of the Owens Company, then owned and thereafter acquired. At that time, the Owens Company had worked on flow, or gob, feed, as evidenced by the 1906 and 1909 Bock patents on forming machines (La France, R. 9839-9840), and the 1909 agreement lists [fol. 13669] a Bock patent for a forming machine (Lloyd T. Williams, R. 5520).

(b) In 1917, Owens obtained an option on the Lott patent applications, acquiring them the next year, the applications resulting in patents of great importance, covering plunger feeders.

(c) In January, 1919, Brady of Hazel wrote Walbridge of Owens (Owens Ex. 5208), complaining of a proposed license by Owens to Boldt for the Graham forming machine, "because, as I read it, we have the same right to use the Graham Machine as we have to use the Owens Machine, and that right is exclusive for our line of ware."

(d) In 1923, Blair of Owens wrote the Owens directors that Brady of Hazel-Atlas was asking for "a non-exclusive license under the Lott patents for their present line of of ware" (Owens Ex. 6001), which may have been either a mistake by Blair or an endeavor by Brady to compromise a disputed claim to exclusive rights.

(e) In April, 1924, Owens granted Hartford a license under the Lott, Bock and other patents.

(f) In September, 1924, Hazel wrote Owens that Hazel had exclusive rights under the 1909 contract, and that these rights had been violated by the Owens license to Hartford (Ex. 910).

(g) In October, 1924, F. G. Smith of Hartford wrote to Heintzelman of Monongah, a Hartford licensee, that "They [Hazel] consider that the Owens Company did not look after their interests sufficiently—that they were entitled to rights under the Lott patents anyway—and their whole present attitude is one of hostility" (Hartford Ex. 6112).

(h) In 1925 a bill of complaint and interrogatories for a contemplated suit by Hazel against Owens to establish [fol. 13670] its exclusive rights were prepared, and were sent early in 1926 to the Hazel Company, but the Hartford Company seized the offensive by bringing and actively prosecuting patent suits which threatened the very existence of the Hazel Company (*supra*, para. 7, Hazel brief, p. 37.).

(i) In December, 1927, W. J. Belknap, Owens counsel, studied the Hazel claim with Lloyd T. Williams, Owens attorney, and wrote a long opinion, pointing out that the Hazel exclusive license may be broadly "to manufacture * * * by the aid of machines and other things and the improvements thereon" (third page, first para.), and said it was "a very important question, and to decide the situation wrongfully either way would be quite a serious matter" and "I am unable to state definitely whether or not Hazel has the exclusive right" (Owens Ex. 6000).

(j) The March 25, 1930, memorandum of Carter (Ex. O-5999) refers to the 1927 Belknap opinion and says that "neither the opinion of Mr. Belknap nor that of Mr. Williams is definitely final of their views" (p. 4.).

(k) Witnesses of the highest standing, including members of the bar of this Court, testified under oath and cross-examination that in the 1932 negotiations the Lott claim by Hazel was an important factor.

Lloyd T. Williams (5487, 5488, 5420, 5483);
John H. McNerney (R. 10018, 10019);
C. B. Belknap (R. 10159, 10163, 10164);
W. E. Levis (R. 2455, 2456);
F. Goodwin Smith (R. 594); and
J. H. McNash (R. 3138, 3141).

(l) There is not a word in testimony or exhibit, which contradicts the foregoing. The circumstance that certain letters written by various persons (Exs. 140, 141, Hazel Ex. 5084, Ex. 1772) did not mention specifically the Lott [fol. 13671] claim shows only that it was not considered necessary to mention it in these letters, and not that it never existed. (The Safford testimony about his letter, Ex. 1772, and the importance to Owens of working out some arrangement, "on account of all the conflicting claims arising out of their old contract," (R. 6127 through 8, probably referred to the 1909 Owens-Hazel contract.)

14. The Hartford license to the Hazel Company, in the following respects, placed the latter at a substantial disadvantage compared to other Hartford licensees;

(1) Hartford furnishes free, valuable maintenance, service and engineering to other Hartford licensees, who use Hartford feeders and other machines, while Hazel, paying the same royalties as other Hartford licensees, spends hundreds of thousands of dollars a year on maintenance, engineering and servicing (Hazel brief, p. 27.)

(2) Hartford does not protect Hazel, but does protect other licensees, against patent infringement suits by others, by agreeing to defend at its own expense such suits and to reimburse the licensee, in case of loss, for royalties paid by it (Hazel brief, p. 28.)

Comment.

Not disputed.

15. The Hazel-Atlas Company did not exert or attempt to exert any control over any of Hartford's licensing policies.

Comment.

This is, we think, disputed. But the evidence fails to show any such exertion or attempt (Hazel brief, pp. 5259). Letters written in 1932 and 1933 by McNash of Hazel, a Hartford licensee, to Hartford, inquiring what Hartford had done with respect to its licensees, fall far short of establishing any control or attempt to control the Hartford policy, which was established many years before 1932, the [fol. 13672] year when Hazel is alleged to have joined a conspiracy.

16. Hazel Company was not involved in any transactions by other defendants, with respect to forming machines (Hazel brief, pp. 53, 54).

Comment.

Perhaps in dispute.

But Hazel had nothing to do with the dealings between the Hartford, Owens, Lynch, Whitall-Tatum (Headley & Thompson), Miller or O'Neill companies. Hazel did receive a non-exclusive license, for suction, from Owens, under

some O'Neill patents, Hazel paying Owens $50,000 for such license with agreement to pay $50,000 more if Hazel should use the inventions (plff.'s brief, p. 267). As Hazel had the right under its Owens license to use suction machines if it wanted to do so, it was proper for Hazel to obtain and pay for a non-exclusive license to free such machines from the overlapping O'Neill inventions.

17. The evidence in the record fails to show that the money payments made by the Hartford Company to the Hazel Company, which payments commenced in 1932, have created or tended to create a monopoly or restraint in patents, machines or glassware, or that anything which the Hazel Company did, either by exchanging licenses with Hartford and Owens or otherwise, created or tended to such effect.

The record does show that since 1932

competition has increased (Hazel brief, pp. 5-8);

the Hazel percentage of business has decreased (Ex. 1393; Hazel Ex. 5088); and

the Hazel profit has decreased (Hazel brief, p. 7), the average profit for 1928 through 1931 being 13.75%, al- [fol. 13673] though Hazel was then burdened by heavy patent litigation, and the average profit for 1933 through 1939 (full years of operation under the Hartford license) being 12.15% (omitting a profit in one year from a sale of securities).

Comment.

The above record facts are not in dispute, and effect of contracts over a period of years is significant, *Chicago Board of Trade* v. *U. S.*, 246 U. S. 231, 238; *U. S.* v. *Standard Oil*, 283 U. S. 163, 175.

18. The July 1, 1932 Owens-Hazel license agreements relate to suction and to feeders and forming machines, and are contained in a General License Agreement and a Supplemental License Agreement, each dated July 1, 1932. These cancelled all prior agreements between the parties, including a 1909 agreement whereby each had certain exclusive rights, and also released all claims against each other.

In the suction field, Hazel retained only non-exclusive rights, while Owens retained its exclusive rights.

In the feeder and forming machine field, Owens and Hazel exchanged non-exclusive licenses, first through Hartford (by authorizing Hartford to sublicense under their respective patents) and, second, directly, if and when their Hartford licenses should terminate (Hazel brief, pp. 49-51).

Comment.

Not disputed.

19. There was not any agreement in 1933 (or any other time) by Hazel to restrict its fruit jar production.

Comment.

This is in dispute (plff.'s brief, p. 321, *et seq.*; Hazel brief, p. 59, *et seq.*; and plff.'s reply brief, p. 125, *et seq.*).

[fol. 13674] 20. There was no "system" of price leadership. The facts that the Hazel-Atlas Company is a price leader in the wide mouth field, Ball Brothers in the fruit jar field, and Owens in the narrow neck field do not establish a "system", nor any agreement between them or others that there should be such leadership.

Comment.

The above is in dispute as to there being any such "system" (plff.'s main brief, p. 411, *et seq.*, Hazel brief, p. 61, *et seq.*).

21. There was no quota system adhered to by Hazel.

Comment.

Although this is in dispute, it is primarily a controversy between the plaintiff and defendant Glass Container Association, and should be dealt with by them.

CONCLUSIONS OF LAW

1. The Hazel Company did not join any conspiracy, by receiving a license under Hartford patents, or by being paid by Hartford for considerations received.

2. The Hazel Company did not join any conspiracy, by entering into the July 1, 1932, agreements, nor by any other act.

3. The Hazel Company did not violate any antitrust law, by entering into the July 1, 1932 Hartford-Hazel agreements or any amendment or supplement thereto.

4. The July 1, 1932 Hartford-Hazel agreements, and the amendments and supplements thereto, did not create or tend to create a monopoly, or restrain or tend to restrain trade or competition, in patents, in machines or in glass containers.

[fol. 13675] 5. The Hazel Company did not violate any antitrust law, by entering into the July 1, 1932 Owens-Hazel agreements or any amendment or supplement thereto.

6. The July 1, 1932 Owens-Hazel agreements, and the amendments and supplements thereto, did not create or tend to create a monopoly, or restrain or tend to restrain trade or competition, in patents, in machines or in glass containers.

7. The Hazel Company has not violated any antitrust law by any agreement to restrict its production of fruit jars.

8. The Hazel Company has not violated any antitrust law, by being a party to any scheme or system of price leadership.

9. The Hazel Company has not violated any antitrust law, by any agreement or agreements with respect to quotas.

10. The Hazel Company has not violated any anti-trust law.

11. The individual Hazel defendants have not violated any antitrust law.

12. The suit should be dismissed as to defendants Hazel-Atlas Glass Company, J. Harrison McNash, Walter H. McClure, George S. Quay, L. C. Paull, H. W. Gee, William W. Holloway and B. H. Seabright.

Joseph D. Stecher, Attorney for Hazel-Atlas Defendants, Second National Bank Building, Toledo, Ohio.

Of Counsel: Stephen H. Philbin, Maxwell Barus, 20 Exchange Place, New York, N. Y.

July 17, 1942.

* * * * * * *

[fol. 13676] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW OF HARTFORD-EMPIRE CO. ET AL.—Filed July 18, 1942

The defendant, Hartford-Empire Company, and the individual defendants, F. Goodwin Smith, Bartlett Arkell, Robson D. Brown, Roger M. Eldred, Karl E. Peiler, Arthur T. Safford, Jr., Theodore L. Champeau and A. M. Pease, submit herewith proposed findings of fact and conclusions of law and severally request that the court make findings of fact and state its conclusions of law as therein shown, this request being made separately as to the respective findings and conclusions submitted herewith.

(Signed) E. J. Marshall, S. S. Wall, Attorneys for the within-named Defendants.

Of counsel: Edgar J. Goodrich, Investment Building, Washington, D. C.; James M. Carlisle, 750 Main Street, Hartford, Conn; Arthur C. Beaumont, Penobscot Building, Detroit, Mich.

[fol. 13677] FINDINGS OF FACT

GENERAL FINDING.

Division of Glass Industry

(See Ex. 1568)

1. The principal divisions of the glass industry are (1) glass containers, (2) non-container ware, (3) flat glass. The flat glass division is not involved in this suit in any way.

2. The products of the glass container division are described by the intended use of such containers and consist [fol. 13678] generally of bottles and jars intended as containers of foods and beverages of various kinds, liquors, medicines, toilet preparations and perfumes, and of pressed tumblers and miscellaneous containers.

3. The products of the non-container glassware division include glassware for illuminating and electrical purposes;

technical and industrial glassware; scientific, laboratory, surgical and hospital glassware, signal ware and lenses, table and cooking ware, optical ware, novelties, specialties, private mold articles and miscellaneous non-container ware and articles made by hand, by semi-automatic or by automatic process.

Description of Machinery

4. Glass containers and non-container glassawre (except hand blow ware) are shaped to final form from molten glass in mold-bearing machines of various kinds.

One type of machine is the Owens suction machine in which the glass is drawn up into the molds by vacuum from a pot supplied with glass from the melting furnace.

Another type is the "forming machine" to which mold charges are delivered by hand, by use of a flowing stream "feeder," or in "gobs"; the term "gob" including in a broad sense any small mass of glass detached from the main supply, however detached and of whatever viscosity, shape or size.

The method or practice of delivering molten glass to forming machines, last above mentioned, is known generally as "gob feeding."

Forming machines may be either automatic or semi-automatic, both types being used in the industry. According to the method which they employ to shape the finished product they are of three kinds:

(a) presses, which press the molten glass to final shape;

[fol. 13679] (b) "blow and blow" or "narrow-neck" machines; in which the molten glass is blown to final shape; and

(c) "press and blow" machines, in which the article is shaped by a combination of both pressing and blowing operations.

In automatic production the glass feeding mechanism (of whatever type) and the forming machine constitute a single finely coordinated operating and functional unit, performing together the same ultimate functions (feeding and forming) which are performed, within its range of operations, by the Owens suction machine.

The Industry, Mechanically, Prior to Hartford's Work

5. Until the introduction of the Owens suction machine about 1903 (R. p. 9776) there had been practically no effective mechanization of glassware production, which was still carried on by the old method, *i. e.*, the hand-blowing or blow pipe process and the hand-feeding of crude, semi-automatic pressing or blowing machines, manually actuated. About 1903 the Owens suction machine was introduced into the industry by Owens Bottle Machine Company, a predecessor of the defendant Owens-Illinois Glass Company.

The machine was the first fully automatic bottle-making machine in history, operating upon a new and different principle, fully protected by basic patents.

Following the introduction of the Owens machine and before 1912, the so-called stream feeder, covered by a patent to the inventor Brooke, came into commercial use. In this method a steadily flowing stream of extremely hot liquid glass discharged from the furnace extension into a mold beneath, the stream being periodically intercepted by shear blade members, forming when closed a cup-shaped receptacle, to permit shifting of the molds.

[fol. 13680] Hand-blowing and feeding and the methods and machines above mentioned were the only means of producing glassware in use at the time Hartford-Fairmont Company was formed in 1912.

Specialization

6. Long before the first introduction of the Owens machine it had become the established custom of glassware manufacturers to specialize in one or in a few related fields of glassware. This was due to the inherent nature of the business and of production and sales problems and was not the result of any agreements or understandings. Producers generally served particular trades, as, for example, the druggist trade, dairy trade, liquor or brewery trade, etc., and were so known throughout the industry.

Licensing by Owens and Brooke

7. At and after the first introduction of the Owens machine into the industry Owens adopted the policy of leasing and licensing its machines for the production of glassware of certain specified descriptions or "fields." The division

was for the purpose of realizing a proper and legitimate reward from the practice of the inventions embodied in said machines.

Brooke granted licenses under the Brooke stream feed patents, also by specified and limited fields.

Licensing by limited fields was an established practice in the industry before Hartford-Fairmont was formed, and conformed to the established practices and structure of the industry.

Hartford Glass Feeding Method

8. The method of feeding "gobs" of glass automatically to forming machine which is licensed by Hartford and practiced under its licenses by its licensees may be generally [fol. 13681] described as "shaped suspended charge feeding"; *i. e.*, it includes the accumulation in suspension from the discharge orifice of the feeder of more than enough glass for a complete mold charge in such a state of viscosity as to be "pasty" and capable of suspension, the shaping of the charge "free hand" while suspended to a shape appropriate to the mold, and the severing of the compact, shaped mold charges while in susension by mechanical shears properly spaced below the orifice.

Methods and Machines Other Than Hartford's

9. There are methods of producing glassware other than those disclosed in Hartford's patents and licensed by it, including the following:

(1) *Hand-blowing* of glassware and *hand-feeding* of semi-automatic and automatic forming machines.

(2) *Owens suction method and machine.* The basic patents on these expired in 1921 and 1924 and the LaFrance "individual dip-head" patent in 1933.

(3) *Stream-feeding.* This method is in use by the third largest producer of fruit jars in the United States and is used also in the production of some articles by the defendant Ball Brothers Company.

(4) *Other methods.* The record shows that another glass feeding device has been used for some years in the production of heat-resistant glassware. (R. p. 5260.) Suction gob

feeding, *i. e.*, separating a specific quantity of molten glass from a tank and delivering it to the forming machine mold by use of a suction cup, is still another alternative means. (R. p. 9734.)

None of the methods of producing glassware mentioned above are subject to any basic or controlling unexpired patents and all of them may be freely practiced by the public.

[fol. 13682] Hartford-Fairmont Company

10. Hartford-Fairmont Company, the predecessor of the defendant Hartford-Empire Company, was a New York corporation organized in 1912 by three groups or interests, The Beech-Nut Packing Company, Monongah Glass Company and Messrs. William A. Lorenz, William H. Honiss, Edward H. Lorenz and Karl E. Peiler, consulting engineers, of Hartford, Connecticut. Beechnut had consulted the engineers as to improvement of containers made for it by Monongah.

Hartford-Fairmont Company was formed for the purpose of devising, inventing and developing new methods and machines for the automatic production of glass containers, with the expectation also of licensing them if that should prove to be practicable. It was actively engaged in such work until its business and assets were taken over by Hartford-Empire Company in 1922. It also inaugurated and carried on an extensive program of service to its licensees on operating and production problems.

Hartford-Fairmont Company developed successively several types of automatic glass feeders, *viz.*, the so-called Paddle Feeder, the Paddle-Needle Feeder which combined the use of paddle and of plunger, and the so-called Single Feeder, a plunger feeder; which types of feeders were successfully commercialized by licensing and leasing them to glass manufacturers. In the course of its development work it also experimented with and developed alternative forms of glass feeders, including the so-called heated hood feeder, pneumatic feeders employing air pulsations instead of plunger impulses, the so-called punty feeder, suction gob feeder and other forms of feeding devices.

Beginning in 1912 and thereafter, Hartford-Fairmont also successively undertook the development of forming

machines of different types, *i. e.*, presses, a press and blow [fol. 13683] machine for milk bottles known as the milk bottle machine, a press and blow machine for general lines of ware, and a narrow-neck machine for blowing bottles

Hartford-Fairmont Company also undertook the development of annealing lehrs adapted to the higher speeds and other necessities of automatic production and of lehr stackers, *i.e.*, devices for placing or stacking glassware in the annealing lehrs.

The reason for undertaking the development of various types of forming machines and of lehrs and stackers was that such machines and devices, as they then existed, were inadequate for high speed automatic production.

Hartford also desired, and it was its purpose, to be able to supply a full line of automatic glassware-producing equipment.

Hartford sought patents upon the inventions of its engineers both of method and of apparatus in connection with feeders, forming machines, lehrs and stackers.

(See Hartford Brief, pp. 70-71; 81-2; 84-6; 104; 106-7; 111-4.)

Hartford-Empire Company

11. The defendant Hartford-Empire Company (sometimes referred to in these findings as "Hartford") is a corporation of the State of Delaware, organized in 1922, having a principal office and place of business in the City of Hartford, Connecticut.

Upon its organization and pursuant to the provisions of the "Agreement for Formation of Hartford-Empire Company," dated October 6, 1922, (Ex. 16), it acquired all the outstanding shares of stock of its predecessor, Hartford-Fairmont Company, and thereafter succeeded to the business and all or substantially all of the assets of said Hartford-Fairmont Company (which was later dissolved) and to all of the assets of Empire Machine Company, a [fol. 13684] Maine corporation, with the exceptions stated in said Exhibit 16.

Hartford's Business

12. After succeeding to the assets and business of Hartford-Fairmont Company in 1922, the defendant Hartford-

Empire Company continued the business of devising, inventing, developing, improving and perfecting methods of making glassware and machines and apparatus therefor, and licensing glassware manufacturers and leasing equipment to them; and continued to furnish service to its licensees upon operating and production matters.

Hartford has been and is primarily a research and engineering company within the field of glass-working machinery, equipment and processes. Its machines and processes are patented. They are furnished to the glassware industry under lease-license agreements, on a royalty basis.

Hartford itself designs and prepares drawings and specifications for the manufacture of its machines and equipment, the actual building of them being done in part in its own plant and in part under contracts, and under the direct supervision and control of its own employees. (R., p. 8180-1.)

Hartford is not a manufactureer of glassware, and and neither it nor its predecessor ever has been engaged in that business or ever has planned or intended to be so engaged.

Hartford has sought and seeks to protect its discoveries and inventions by letters patent and owns many patents thereon, but it is not a mere "patent holding company."

Hartford's physical plant includes, (1) its main building, housing its offices, administrative and technical management, draftsmen, engineering staff, production facilities and storage; (2) its laboratories; and (3) its "pilot plant" or experimental glass factory. Its organization, which includes many scientifically trained men, has grown steadily and numbered in 1941 over 350 employees.

[fol. 13685] Hartford's service to licensees draws upon the results of its laboratory studies. Its laboratories are also available to licensees for study of their current individual problems. Hartford's service to licensees covers all operating problems from furnace to shipment of finished product, and also problems of accounting, inventory controls, plant efficiency and management. The licensee manufacturers who call most frequently for service and receive a greater share of it, are the smaller manufacturers who do not have their own corps of engineers or research or development staffs.

Hartford's Licensing Policy

(See Hartford Brief, pp. 86-91 and 475 *et seq.*)

13. Hartford's licensing policy, in force when this suit was brought, was essentially that which had been adopted by its predecessor, Hartford-Fairmont Company. Under that policy

(1) Hartford mainly granted licenses for the use of its inventions and equipment in the production of specified kinds or types of glassware corresponding generally to the lines currently manufactured by its licensees, extending its licenses from time to time as the result of requests by or negotiations with licensees.

(2) It furnished equipment under lease-license agreements, retaining title thereto.

(3) It charged license fees for the original installation of its machines or equipment which in the earlier years of its history covered the cost and a manufacturing profit but which in later years tended to approximate actual cost to Hartford, and since about 1937 to be less than actual cost (except as to stackers). (R. pp. 9012-6.)

(4) It reserves a continuing royalty for the use of its machines based upon the amount of production thereon and with certain minimum royalty requirements (excepting stackers, which have, at least for many years, been furnished to licensees upon a single fee or royalty payment in advance).

[fol. 13686] As a matter of policy Hartford preferred as licensees the financially stronger and better operated glassware manufacturers. It generally preferred to license glassware manufacturers already in existence rather than newcomers in the industry, although this policy was not inflexible. It and its predecessor, Hartford-Fairmont Company, granted some exclusive licenses, especially in the earlier years, but its policy trended generally away from exclusives.

Hartford's policy generally was unfavorable toward granting additional licenses under its inventions or for the use of its equipment after it had licensed sufficient equipment to produce all of the glassware which the market could absorb, but this policy, again, was not inflexible. Many new

licenses were granted and many existing licenses extended at the request of Hartford's licensees.

The contractual arrangements and essentials of licensing policy above mentioned were conceived and adopted by Hartford-Fairmont Company in the early years of its existence and before it had any business contacts of any kind with any of the other defendants hereto, or with any other manufacturer of glassware, and represented its own independent judgment and policy, uninfluenced by anyone else.

It was the practice of Hartford to describe glassware within the designated fields of its licenses by the nature of the use for which it was intended, *e.g.*, prescription and proprietary ware, beer bottles, liquor bottles, milk bottles, etc. This conformed to the custom and terminology of the glassware industry and was an appropriate and, in fact, the only means of describing the respective types of glassware, in the manufacture of which the licensee was licensed to use Hartford processes and equipment.

The leasing of equipment and retention of title to it was considered by Hartford to be, and was, essential to the [fol. 13687] effective reservation of continuing royalties. Licensing by fields of ware was also particularly essential in the early formative period of Hartford's licensing policy because of the necessity of devising equipment, particularly forming machines, for specific fields or types of ware and adapting automatic methods and equipment of all kinds to the particular products and factory conditions of various licensees.

The limiting of the use of the licensed equipment to fields of glassware manufacture in which the licensee desired actively to use it, and withholding other rights, were believed by Hartford to be and were, in effect, the keeping within Hartford's own hands of capital assets, *i.e.*, rights to the use of its inventions and equipment which were likely to have a separate salable value, and its policy in this respect also contributed to the more complete use of its inventions and machines by licensees within the respective fields.

The policy of selecting as licensees the stronger and better operated glass manufacturers was intended to and did result in a better financial return to Hartford under its licenses.

The essential features of Hartford's contractual relations and policy as to licensing were, therefore, not only intended to be but were in fact adapted and appropriate to realize for it the reward of the inventor and patentee.

In October, 1940, Hartford, as shown in its supplemental answer herein, irrevocably waived and abandoned all limitations and provisions in licenses granted by it relating to

(1) the type or kind of glassware which can be produced by each licensed glassware manufacturer;

(2) the use of the product manufactured;

(3) the character of the glassware that may be manufactured, as to (a) weight, (b) color, (c) capacity, and (d) composition;

[fol. 13688] (4) the quantity of glassware which may be produced;

(5) the market for the glassware, including (a) customers or class of customers and (b) territory;

(6) transfer to Hartford of licensees' patent rights covering changes in, or additions to, the licensed machinery. New contracts with its licensees provided for the conveyance to Hartford of non-exclusive licenses only, under such patent rights;

(7) the number of feeding machines that may be used by the licensee;

and all exclusive or semi-exclusive grants of licenses by Hartford were made non-exclusive, excepting only the license rights of Thatcher Manufacturing Company to the use of the so-called "milk bottle machine." Said machine, however, is not necessary for the manufacture of milk bottles, there being other entirely adequate milk bottle blowing machines available.

Also, as shown in its supplemental answer, Hartford, by formal action by its board of directors, publicly declared and announced its policy as to granting new licenses to be—

"That hereafter the company shall grant leases covering its glass-working equipment, of then standard types or any improvements thereon, and the right to use the same, similar in terms and extent to its then current license and lease agreements, to any applicant for such leases whose primary business is the manufacture of glassware; provided that the applicant conforms to such standards and requirements as may be prescribed by the officers of the

company to insure that, with regard to financial and kindred considerations, the applicant, when granted such a license, will have reasonable prospects of continuing in the glass business."

14. The record reveals no refusals of license by Hartford to any concern having adequate financial backing and capable, experienced management seeking to become a permanent factor in the glass industry.

[fol. 13689] 15. The record in this case reveals no interference by the Glass Container Association with Hartford's licensing policy or with Hartford's licensing (Hartford Brief, 511-514).

16. None of the license agreements to which Hartford has ever been a party has ever contained any provision excluding any licensed manufacturer from manufacturing glassware of any kind by means of methods or equipment not embodying Hartford's licensed patents or inventions. Hartford's licensees are not, and never have been, required to use Hartford's licensed equipment exclusively.

17. In general, the limitations formerly in Hartford's license agreements were no practical handicap to the licensees. Although some of the limitations were exceeded, Hartford never exercised any rights of cancellation or forfeiture. For example, each of Hartford's milk bottle licensees has, since the date of its license, made and sold as many milk bottles as it wanted to or was able to on its licensed equipment, and none of them has ever asked for additional equipment for the manufacture of milk bottles.

Prices, Competition, Etc.

18. Hartford has never been a party to any agreement, understanding or arrangement relating to price leadership, or having a purpose or effect of fixing, manipulating or maintaining prices on glassware. Hartford has never dictated or suggested, or attempted to dictate or suggest, the prices at which any licensee should sell any glassware.

19. Hartford's policy has been and is, through its research, development and service, to help its licensees make more bottles, of better quality, more cheaply, and thereby to improve their competitive positions among themselves,

with other manufacturers and other processes, and with other types of containers (Hartford Brief, pp. 2-3).

[fol 13690] 20. It is stipulated, and is so found, that Hartford's research, engineering and technical service to producers increased the production of glassware, reduced the cost of glassware and improved the quality thereof. (R. 8190-1.)

21. Active competition in the manufacture and sale of glass containers has always existed and does exist. The smaller companies have grown substantially and have enjoyed a greater proportionate share of the expanded glassware market than did the larger concerns.

22. The evidence shows a substantial decline in glassware prices. Prices thereof in 1939 were more than 25% below the 1929 level, and had declined substantially further than the level of all manufactured goods.

The evidence shows that Hartford's royalties have not imposed a burden or domination on the glass container industry and have not acted as a means of fixing prices.

23. There is no proof that the defendants or any of them have monopolized or restrained trade and commerce or any part thereof, or are monopolizing or are restraining trade and commerce, in the manufacture and distribution of glass milk bottles or of fruit jars or of other glass containers or of heat-resisting ware, or that Hartford has aided or abetted or is aiding or abetting any such monopoly or restraint of trade and commerce.

24. None of the agreements involved in this case to which Hartford has ever been a party was entered into for the purpose or with any intent to restrain, monopolize, or attempt to monopolize, trade or commerce, or any part thereof, in patents, machinery or glassware, nor has any such agreement had any such effect, nor was any such agreement entered into as a part of or pursuant to any unlawful conspiracy.

[fol. 13691] Findings as to Empire Machine Company and Corning Glass Works

1. The defendant Empire Machine Company (sometimes referred to in these findings as "Empire") was a corporation of the State of Maine, organized in 1909 to take

over from Messrs. A. B. and A. A. Houghton of Corning, New York, some patent applications and development work directed toward the automatic making of electric lamp bulbs and other paste-mold glassware. "Paste-mold" glassware signifies light, thin-walled, smoothly finished glass articles formed or shaped by a different process than containers generally,—the latter being known as "hot mold" glassware—and indicates glassware of a different kind intended for different uses and market than hot mold ware.

2. Empire was owned and operated independently of Corning Glass Works, though some of its stockholders were also stockholders of Corning Glass Works. Its development work ceased in 1915. (See R. 8512.) In 1922, its patent assets were assigned to the defendant Hartford-Empire Company in connection with the formation of that company (see Ex. 16, p. 90 in exchange for about 40% of the stock of Hartford-Empire Company. In 1940, Empire was dissolved. (See R. p. 8491.) The order dissolving it was dated January 8, 1941. (See Ex. C-5653.)

3. The defendant Corning Glass Works (sometimes referred to in these findings as "Corning") is a corporation of the State of New York, having its principal business office in Corning, New York. It has always manufactured glassware specialties, including electric lamp bulbs, railway lantern globes, railway and marine signal glassware, glass tubing and cane, and heat-resistant glassware made from glasses developed in its laboratory and trade marked "Pyrex." This heat-resistant glassware includes cooking [fol. 13692] ware, laboratory glassware, technical glassware and battery jars.

The Empire-Hartford 1916 Agreement

4. Neither Hartford nor Empire had any knowledge of the existence of the other, or of the work the other was doing, until the declaration by the Patent Office on its own motion at the end of 1915 of six interferences, Nos. 39374, 39375, 39377, 39379, 39428 and 39429 (Exs. H-6120, H-5389, H-5390, H-5391, H-6122, H-5392) between applications of Chamberlin, owned by Empire, and applications of Peiler, owned by Hartford.

5. On June 30, 1916, Empire Machine Company and Hartford-Fairmont Company made an agreement (Ex. 1). Prior

to the agreement, Empire had ceased development work; it had no practical glass feeder, and no forming machines or inventions relating thereto useful outside of the paste-mold field. Hartford had no machines, developments or inventions in the paste-mold field, nor any intention of entering that field. There was no actual or potential competition between Hartford and Empire.

6. It appeared from the face of the interference papers that the result might be a deadlock as to methods and apparatus of heat treatment of glass issuing from the feeder, then considered vital to glass feeding. Since the business interests of the two companies were in different fields and did not conflict, they made the 1916 agreement instead of fighting out the interferences.

7. The 1916 Empire-Hartford agreement (Ex. 1) provided that Empire should have the exclusive right to use any matter disclosed in the named applications of its own inventor in the fields thereinafter described in the event that Hartford should obtain patents covering such matter. Hartford was given reciprocal exclusive rights in the container field.

[fol. 13693] 8. Empire's reason for entering into the 1916 agreement was to assure itself the exclusive right to use the subject matter disclosed in its Chamberlin applications and involved in the interferences, in those fields in which it had been engaged and was interested, as above stated; and also to get the right to use in said fields the Hartford paddle feeder. Hartford's reason for entering into the contract was to assure itself the use of the interfering subject-matter above mentioned in the so-called container field in which alone it was interested.

9. The 1916 agreement between Empire and Hartford merely vested rights in patents in the respective parties. It had no effect, nor was it intended or attempted to give either party any control over the manner in which the other exercised its patent rights granted to it by the agreement or retained by it apart from the agreement. There is no proof that either party attempted in any way to control or influence the conduct of the other in the manner in which the other should exercise its rights, exclusive or non-exclusive, granted to it by the agreement or retained by it apart from the agreement.

10. In 1917, the Patent Office put some of the Chamberlin and Peiler applications into interference with an application of T. C. Steimer, filed in 1910. Hartford and Empire both believed, and had good reason for doing so, that the patent to be issued on the Steimer application might prevent both Empire and Hartford from freely exercising the rights in respect of which they had dealt in their 1916 agreement. Empire bought the Steimer application (Hartford contributing half the cost) and granted a license thereunder to Hartford along the general lines of the 1916 agreement.

11. The Empire-Hartford agreement of 1916 was cancelled September 23, 1940. (See Exs. H-5030, H-5031; R. 1614-15.)

[fol. 13694] 12. There is no evidence that the 1916 Empire-Hartford agreement resulted in any unlawful monopoly of patents or any monopoly of the production or marketing of glassworking machinery or any monopoly of the production or marketing of any kind of glass products, or that any such result was intended.

The Hartford-Empire Formation Agreement of 1922

13. As of October 6, 1922, Hartford-Fairmont Company and Empire entered into an "Agreement for the Formation of Hartford-Empire Company" (Ex. 16). Said agreement had in fact been substantially agreed to in the last half of 1920, its execution being delayed by collateral matters.

14. In 1920 Hartford's financial resources and conditions were such that it was faced with the choice of one of three courses, (a) sale to Owens; (b) financial assistance from bankers; or (c) reorganization involving Hartford and Empire. Following 1920 Hartford did receive financial assistance from stockholders of Empire.

15. Corning's laboratory facilities and research promised to yield new glasses adapted for uses outside of its field and perhaps for the making of containers. It was further developing its paste-mold machines, but it had developed no feeder of its own. By the 1916 contract between Hartford and Empire, it had rights, exclusive in certain fields, in every invention embodied in the 1916 Paddle Feeder, but had no right to use the Paddle-Needle Feeder which its

licensee Corning needed and wanted badly as an improvement on the Paddle Feeder. On the other hand, Hartford could not license anyone to use the Paddle-Needle Feeder in the exclusive fields granted Empire in the 1916 contract, as the Paddle-Needle Feeder embodied inventions present in the Paddle Feeder.

[fol. 13696] The Agreement of 1922 Relating to Patent Rights and Formulas

16. As of October 6, 1922, Hartford-Fairmont Company, Hartford-Empire Company, Empire and Corning entered into an "Agreement Relating to Patent Rights and Formulas" (Ex. 19), sometimes referred to in these findings as "the 1922 Glass Contract." This contract, in effect, gave Corning exclusive rights to use Hartford's feeding and forming machines and patents obtained prior to January 1, 1940, in the fields of Corning's then endeavors. This also gave Hartford exclusive rights, except for shop-rights in Corning, to use Corning's feeding and forming machines and patents obtained prior to January 1, 1940, for the making of containers unless those containers were made of resistant glass within a definition.

Corning gave Hartford exclusive rights, subject to a shop-right in Corning, to glass formulas other than the resistant glass described in Ware Division C (Ex. 19, p. 70) in the container field to be used with its machines. As this worked out, Hartford got no glass rights from Corning which it used.

17. The 1922 Glass Contract was in status form, that is it declared what the situation was to be after its execution. Thus it recognized the rights of Corning in the rights granted to Empire by the 1916 agreement (which it did not cancel), and in Corning's own development, and in addition specified what rights Corning should have in other Hartford inventions in feeders and forming machines other than those covered by the 1916 contract.

18. Prior to and at the time of the execution of the 1922 agreements (Exs. 16 and 19) there was no existing or potential competition between Hartford and Corning, either in the development or marketing of glass-working machinery or in the development of glass compositions or in [fol. 13696] the production of glassware of any kind. There

was no existing or potential competition of any kind between Empire and Hartford.

19. The Agreement Relating to Patent Rights and Formulas of 1922 between Hartford-Fairmont Company, Hartford-Empire Company, Empire and Corning was cancelled September 3, 1940. (See Exs. H-5030, H-5031; R. 1614-15.)

20. There is no evidence that either the 1922 Agreement for Formation of Hartford-Empire Company or the 1922 Glass Contract between Hartford, Empire and Corning was entered into with the intent to restrain or to monopolize, or to attempt to monopolize trade or commerce, or any part thereof, in patents, glassmaking machinery or glassware, or that either of said agreements had such effect, or that either of said agreements was entered into as a part of or pursuant to any unlawful conspiracy.

21. There is not and has not been since October, 1940, any agreement whatever between Empire and Hartford, or between Corning and Hartford except agreements for the leasing of Hartford equipment by Corning.

[fol. 13697] Findings as to Owens-Illinois Glass Company

1. The defendant Owens-Illinois Glass Company (sometimes referred to in these findings as "Owens") is an Ohio corporation organized in 1907, under the name of The Owens Bottle Machine Company, and having a principal office in the City of Toledo, Ohio. It succeeded a New Jersey corporation, Owens Bottle Machine Company, which had been formed in the year 1903. In 1919 its name was changed to The Owens Bottle Company; in 1929 its name was again changed to Owens-Illinois.

Business of Owens-Illinois Glass Company

2. The predecessor of Owens received a license from the Toledo Glass Company for the use of the Owens suction process and machines in the manufacture of bottles, jars and parts thereof, with the right to sub-license. It engaged actively in the business of sub-licensing the Owens suction process and machine, which business was continued by Owens. It customarily retained title to the machines which it licensed.

Neither said predecessor nor Owens engaged in the manufacture of glassware until about the year 1910, at

which time Owens went into the glassware manufacturing business in a major way. (See Hartford brief, p. 77.)

By 1915 Owens was a large producer of glassware and by 1919 its manufacture of glassware had become so much greater than its licensing business that Owens "had ceased to be important as licensors and had become more important as bottle manufacturers."

Owens' licensing business continued to become less important. Its basic patents expired in 1921. Owens machines which can operate competitively can be built under [fol. 13698] the disclosures of the expired patents. This has long been true.

Except for the agreements with Hazel-Atlas in 1932 and 1935 (Exs. 148 and 572), Owens has granted no licenses relating to the suction process since about 1911.

In the years 1917-1918 Owens granted three licenses for the use of the so-called Graham feeder, which was a stream feeder similar to the Brooke device already described. It was objectionable in a great many ways and the licenses were abandoned shortly thereafter (R. 9855-8). Owens did not subsequently license or offer to license any glass feeders.

It was not in the licensing business in 1923 nor in the early part of 1924, at which time occurred the negotiations leading up to the execution of the agreement of April 9, 1924, between Owens and Hartford. (Ex. 55.)

Owens Development of Glass Feeders

3. About 1916 Owens became interested in the development of glass feeders, and acquired the Graham Glass Company, which had built an experimental model of the "Graham feeder." (R. 9851-3, 9855, 9858 and 9863.) Owens abandoned the Graham feeder prior to 1920.

In 1918 Owens took an option on the patent application of Clyde Lott relating to glass working machinery, including feeding devices, took over prosecution of the application, and later acquired title to it and to the patents issuing upon it and upon applications divided from it. In 1921 Owens secured license rights under the Brookfield patents from Hazel-Atlas subject to the rights of Hazel-Atlas to use the inventions of said patents for the production of ware of certain descriptions which it was then making.

These acquisitions were supplementary to active and continuous efforts by Owens to design and build glass feed-
[fol. 13699] ers which would operate satisfactorily. By some time in 1920 Owens was able to design and build a glass feeder of a plunger type which would operate commercially in its factories. (R. 9860.) The total of its program in connection with its feeder was approximately $1,000,000.

Owens-Hartford Relations, 1917-1923

(Hartford brief, pp. 101-4, 213-14.)

4. In 1917 Owens and Homer Brooke Glass Company sued Hartford for alleged infringement of the Brooke stream feed patent; a decree in favor of Hartford, finding non-infringement, was rendered early in 1919 and affirmed on appeal late in the same year. Meanwhile interferences had been declared in the Patent Office between the Lott applications, controlled by Owens, and applications of Hartford inventors. These interferences, and others which were declared later, involving applications owned or controlled by Owens and by Hartford, respectively, continued until after the making of the April 9, 1924, agreement between Hartford and Owens. (Ex. 55.)

In 1917 and again in 1919 there were negotiations between Owens and Hartford looking to the possible purchase of Hartford by Owens. Nothing came of these negotiations.

Between December, 1921, and June, 1922, there were negotiations between Owens and Hartford looking toward some settlement of conflicting claims as to patents and inventions; which negotiations were brought about by Illinois Glass Company, a suction licensee of Owens and a feeder licensee of Hartford, which was embarrassed by Owens' assertion of rights under the Brookfield patents and by the conflicting claims of Owens and Hartford. Nothing came of the negotiations.

[fol. 13700] Negotiations Culminating in 1924 Contract

5. Negotiations between Owens and Hartford occurred again in May, 1923. Meanwhile Illinois had been insisting upon some solution of the disturbing conflicts over patents; and in December, 1922, additional interferences had been

declared in the Patent Office, involving applications owned by Owens, Hartford and others. These negotiations again failed.

On June 6, 1923, Owens sued J. T. & A. Hamilton Company, a licensee of Hartford, charging that Hamilton infringed Lott patents 1,382,993 and 1,382,994 (Exs. H-5231 and 5232) by the use of Hartford glass feeding methods and machines. On the same date Owens and Hazel-Atlas, as co-plaintiffs, filed a suit against the same defendant alleging infringement of certain Brookfield patents. Hartford intervened in and undertook the defense of both suits.

Owens then opened negotiations with Hartford as to settlement, which continued until August, when a proposal for settlement was rejected by Owens, and additional demands were made upon Hartford as prerequisites to settlement. In January, 1924, further negotiations for settlement occurred. The suits brought against J. T. & A. Hamilton Company were set for trial, and on January 18, 1924, Owens delivered an ultimatum to Hartford as to the terms of any settlement, in the absence of which it would press trial of the cases. (See Ex. 52).

Owens insisted particularly upon (1) control of licensing under both the Hartford patents and inventions and the Owens patents; (2) payment to it as royalty for its license to Hartford of a part of the royalties received by Hartford from Hartford's feeder and former licenses; (3) as further compensation for its license to Hartford, the right to use a number of feeder-former units, of which it then had some in use in its factories, embodying Hartford inventions, pay-
[fol. 13701] ing royalties thereon only if and to the extent that such royalties should exceed an amount to be agreed upon. Counter-proposals by Hartford were refused. Hartford counsel recommended acceptance of Owens' proposal as a basis for settlement.

Situation of Parties Prior to the 1924 Agreement (Ex. 55)

6. (1) *Owens.* Owens had been advised and believed that Hartford would probably secure valid claims in issued patents covering the method of suspended-charge feeding and some important claims upon structure or apparatus essential thereto. Owens used the method referred to and some of the features of apparatus in its own feeders. It sought assurance of its right to continue their use.

Owens believed and claimed that its Lott patents 1,382,993 and 1,382,994 (Exs. H-5231, 5232) covered a structural combination, *viz.*, of plunger, orifice and shears in vertical alignment, essential to the practice of Hartford's suspended-charge feeding method, and a dual valve control used in one type of Hartford feeder ("paddle-needle feeder") then in use, and contained also certain method claims probably covering an important feature of the feeding process. It sought to enforce and to secure the advantage of its rights under those patents.

Owens believed and claimed that it could deadlock the feeder situation so as to prevent anyone from using feeders without a license from it as well as from Hartford, or others, and that the value of its patents, for purposes of settlement, should be substantially equivalent to the value of the Hartford inventions, applications and patents which would issue thereon.

(2) *Hartford.* Hartford believed and claimed that it was entitled to patents upon all essentials of suspended-charge feeding of glass and upon essential apparatus. It [fol. 13702] denied that Owens' patents or pending applications disclosed suspended-charge feeding but recognized (a) that Lott's structural combination claims might be held to dominate apparatus essential to the practice of suspended-charge feeding; (b) that Lott's dual valve control might dominate Hartford's paddle-needle feeders outstanding in the hands of its licensees; (c) that the Lott method claims if sustained might also seriously interfere with the practice of Hartford's method.

Hartford was advised and believed that while it might be successful in the pending litigation the results of an adverse decision would be disastrous to it and to its licensees and might result in complete dominance of the gob feeding process by Owens.

Hartford desired to stop the costly litigation with Owens, to dispose of intereference conflicts (a settlement with Owens being one step toward that end), to protect itself and its licensees, and to assure itself the right to supply, and its licensees the right to use, the best type of feeders without danger of infringement, and to avoid conflicts over forming machine inventions, which conflicts appeared probable.

The foregoing were the reasons for the decision by Hartford to enter into the agreement of April 9, 1924, with Owens (Ex. 55).

In negotiating the terms of said agreement some modification was secured of Owens' position that it should have an equal voice in licensing under the Hartford patents and inventions as well as under its own, to the extent that Owens, in its license to Hartford, retained and reserved only a qualified right to disapprove and prevent sublicensing under Owens patents, as stated in Section 22 of Exhibit 55. Said Section 22 was included in the contract at the insistence of Owens and over the protest and objection of Hartford.

[fol. 13703] Owens-Hartford Contract, April 9, 1924, (Ex. 55)

7. The agreement included the following provisions:

(1) "Licensed Inventions," *i. e.*, those under which licenses were granted, were those owned or controlled by either party prior to July 1, 1941, (a) relating to apparatus or methods of glass feeding, not including the Owens suction method, and (b) forming apparatus or methods in so far as used or usable with feeders.

(2) Owens granted to Hartford an exclusive divisible and assignable license for the life of the licensed patents, reserving to itself, however, a non-assignable and non-divisible right to make and use the licensed inventions contributed by it upon payment of royalty.

(3) Hartford granted to Owens a non-exclusive, non-divisible, non-assignable license for the life of the patents, for use in the manufacture of containers other than pressed containers, and subject to exclusions shown in Schedule C, which schedule excepted certain rights which Hartford had theretofore granted exclusively.

(4) Owens agreed to pay royalties at Hartford's lowest rates but was to have the right to use forty feeder-former units, each unit consisting of one feeder and one former, paying to Hartford the amount, if any, by which the royalties thereon at Hartford's lowest rates should exceed $440,000 per year (with provision for reduction of the number of such units to not less than thirty in case of certain graduated increases in Hartford's income from "licensed inventions").

(5) Hartford agreed to pay royalties to Owens equal to one-half of its "divisible income," *i. e.*, its income from "licensed inventions" after deducting the sum of $600,000 therefrom.

(6) It was provided in Section 8 of said agreement that each party should vigorously prosecute infringement of [fol. 13704] patents owned or controlled by it, at its own expense; also that all interferences in the Patent Office between applications of the parties (Hartford, Owens and Owens subsidiaries) should be settled by arbitration (taking into consideration the practical advantages to all parties to the agreement) in case the parties could not agree on the manner of settling them.

(7) Section 22 of said agreement provided that Hartford might grant licenses under all the "licensed inventions" without the consent of Owens, except that no licenses should be granted under "licensed inventions" contributed by Owens without Owens' consent, for the manufacture of containers, unless such license should fall within one of the following classes:

"Class A. To Hartford's existing licenses for machines now installed or for additional machines, and for the fields of ware covered by such existing licenses, or covered by outstanding contracts.

"Class B. To any Legitimate Glass Manufacturer—(That is, one of good commercial and financial standing, not a commercial user of its own products) for the kind of glassware made by such manufacturer within the twelve months immediately preceding the date hereof, or to a successor in business of such manufacturer and only for use at the locality of the present plant of such manufacturer."

Hartford's Purpose in Entering Into the 1924 Contract

8. Hartford's dominant purposes in entering into the agreement were to end litigation, dispose of interferences, protect its business and income, and to secure proper and adequate return for its inventions and for patents then issued and expected to be issued. It did not have any purpose to restrain trade or commerce in glassware nor in machinery, inventions or patents for the manufacture thereof; nor did it have any purpose to monopolize any part of trade or commerce in either; nor did it combine or conspire with Owens to do any of such things.

[fol. 13705] The Effect of the 1924 Contract (Ex 55)

9. The agreement between Owens and Hartford of April 9, 1924, (Ex. 55) did not have the effect of restraining trade or commerce in glassware nor in machines, inventions or patents for the manufacture thereof, and it did not have the effect of monopolizing any part of trade or commerce in either.

It did not give either Owens or Hartford any control over the industry beyond that which they respectively already had by reason of their patents and patent rights. It did not give Owens any position of dominance which it did not already have; it did not eliminate competition between Owens and Hartford in regard to licensing of gob feeding machines or methods, and there was in fact no such competition between them at the time of the making of the contract.

It did not affect or change the rights or position of either party as to the suction process or suction machines.

Relations Between Owens and Hartford 1924-1932

10. (1) *Section 22.* There is no proof that Owens ever definitely refused the granting of any license by Hartford under the limited power reserved to Owens in Section 22, and no evidence therefore that said Section 22 had any substantial practical effect. Said section was a source of annoyance to Hartford, however, in the granting of licenses and Hartford urged its removal or radical amendment, in which Owens eventually concurred.

All restrictions contained in said Section 22 were eliminated by an agreement between the parties of February 2, 1931 (Ex. 411). There was no understanding or agreement, express or implied, that the limitations in said Section 22 should remain in force, notwithstanding their formal termination.

[fol. 13706] (2) *Infringement Suits.* During the years 1924-1932 Hartford brought certain suits for infringement of its patents after consultation with Owens, and by arrangements made subsequent to 1924 Owens paid a part of the expense of such suits. Such suits were brought by Hartford in a bona fide belief that they were well-founded and that infringement of its patents did exist, and for the purpose of protecting and enforcing its patent rights. Owens' connection with the bringing of such suits, as above men-

tioned, was in good faith, because of its license rights under said patents and the covenant in Exhibit 55 as to the enforcement of patent rights, and not with any intention to harass or oppress anyone. The parties did not combine or conspire, and had no purpose in the bringing of such suits, to restrain trade or commerce or to monopolize any part of trade or commerce.

The 1932 Contracts Between Hartford and Owens
(See Hartford brief, p. 354)

11. (1) The following agreements between Hartford and Owens were executed as of July 1, 1932:

Ex. 144, Agreement for cancellation and reinstatement of contracts and for division of income from Tucker, Reeves and Beatty, between Owens-Illinois Glass Company and Hartford-Empire Company.

Ex. 145, General License Agreement between Hartford-Empire Company and Owens-Illinois Glass Company.

Ex. 146, Supplemental Agreement between Hartford-Empire Company and Owens-Illinois Glass Company.

Ex. 147, Suction Inventions License Agreement between Hartford-Empire Company and Owens-Illinois Glass Company.

(2) The circumstances leading up to the execution of these agreements appear in the findings of fact relating to [fol. 13707] the agreements of July 1, 1932, between Hartford and Hazel-Atlas.

The reason for the agreements and the relinquishment of certain rights by Owens, as provided in them, was to permit Hartford to be in a position to settle pending litigation with Hazel-Atlas and to accomplish the settlement of claims by Hazel-Atlas against Owens relating to the Lott patents and any other claims arising out of the 1909 license agreement between Owens and Hazel-Atlas.

The supplemental agreement was executed at the request of Owens, a similar agreement being requested by Hazel-Atlas and Hartford having no objection to entering into them.

(3) Terms of the Contracts.

(a) *The Cancellation Agreement* (Ex. 144). This agreement cancelled in its entirety the 1924 agreement (Ex. 55) and provided for reinstatement of some, but not all, of the

terms of that agreement in the event that Hazel-Atlas should terminate its license agreement with Hartford (Ex. 142). The restictive clauses in Section 22, having been cancelled in 1931, were not to be reinstated.

(b) *General License Agreement* (Ex. 145). The license from Owens to Hartford and Hartford's license to Owens both became non-exclusive in this agreement; Owens' right to use certain feeder-former units, paying only the excess of the royalty thereon over $440,000 per year was surrendered; Hartford's income from "licensed inventions" subject to division (designated as "net income" in the agreement) was to be computed after a deduction of $850,000 per year instead of $600,000; and Owens' participation therein was reduced from one-half to one-third.

(c) *Suction Inventions License Agreement* (Ex. 147). This agreement granted Owens a royalty-free non-exclusive license, in so far as necessary to avoid any claim of infringement by then existing Owens machines. It also granted to Owens an option to take an exclusive or a non-exclusive [fol. 13708] license or to buy suction inventions of Hartford which Hartford should decide to dispose of, or to grant licenses under, the option terms being as stated in said agreement.

(d) *Supplemental Agreement* (Ex. 146). This agreement made provision for the payment of royalties by either company to the other in case Owens should, prior to January 3, 1945, be deprived of its right under the General License Agreement to receive one-third of the net income of Hartford otherwise than through the default of Owens, or by reason of the termination by it of the General License Agreement.

(4) *Purpose and Effect.* In entering into the contracts above mentioned neither Owens nor Hartford had any purpose to restrain trade or commerce in glassware nor in machinery, inventions or patents for the manufacture of glassware, nor any purpose to monopolize any part of trade or commerce either in glassware or in machinery, inventions or patents for the manufacture of glassware, nor did either of them combine or conspire between themselves or with any other persons to do any of the foregoing things; nor did said contracts, either singly or in conjunction with one another, have any such effect.

Neither singly or in conjunction with one another did the contracts give or confirm Owens in any dominant com-

petitive position, nor eliminate competition, nor effect or perpetuate a division of fields by alloting the suction process to Owens and gob feed to Hartford. Such domination or leadership as Owens may have had in manufacture by the suction process was the result of long and intensive improvement of its operating methods and technique and the building up of highly skilled operating personnel over a period of many years and at a great expense. Such domination as Hartford enjoyed in the so-called gob feed field was the result of its own inventions, patents, research and service.

[fol. 13709] The 1935 Contracts Between Hartford and Owens

(See Hartford brief, 359-363)

12 (1) The following agreements between Hartford and Owens were executed in 1935, as of the dates indicated below:

Ex. 568—General License, Owens to Hartford, Sept. 30, 1935.

Ex. 569—General License, Hartford to Owens, Oct. 1, 1935.

Ex. 578—Consolidated Feeder and Former License and Lease, Oct. 1, 1935.

Ex. 580—Consolidated Lehr Agreement, Oct. 1, 1935.

Ex. 579—Consolidated Stacker & Conveyor Agreement, Oct. 1, 1935.

Ex. 571—Suction Inventions License Agreement, Oct. 1, 1935.

Ex. 581, Ex. 1330—Agreement re Libbey Glass Mfg. Co., Oct. 2, 1935.

(2) *Terms of the Contracts.*

(a) *General Licenses, Owens to Hartford* (Ex. 568) provided in part that "all existing contracts * * * are hereby cancelled, but this cancellation does not bring into effect any contracts * * * heretofore existing * * *."

Owens' license to Hartford under this agreement was non-exclusive and without royalty, and was under "licensed inventions" of feeders and forming machines as defined in said agreement. In consideration of the license and of other considerations expressed in the agreement, Hartford agreed to pay Owens $2,500,000 in quarterly installments

of $250,000 each, the first of which was to be due December 15, 1935. These payments were thereafter made as agreed in said contract.

(b) *General License from Hartford to Owens* (Ex. 569) granted to Owens a non-exclusive license under licensed inventions as defined in said agreement, being feeder and [fol. 13710] forming machine inventions, at Hartford's standard royalty rates.

(c) *Suction Inventions License Agreement* (Ex. 571). Under this agreement Owens took a royalty-free non-exclusive license under Hartford's suction inventions, non-assignable and non-divisible except in certain respects stated in said agreement, no options or other rights than the non-exclusive license being given to Owens.

(d) The *Consolidated Feeder and Former License and Lease* (Ex. 578), the *Consolidated Stacker & Conveyor Agreement* (Ex. 579) and the *Consolidated Lehr Agreement* (Ex. 580) were merely general agreements making applicable to equipment of the kind mentioned, in the possession of and used by Owens, the terms of Hartford's standard lease forms, with additional provisions appropriate to the situation of the parties which have no significance upon questions now under consideration.

(e) *Agreement re Libbey Glass Mfg. Co.* (Exs. 581, 1330) provided for adjustment of patent conflicts between Hartford, Libbey and Owens so far as concerned certain paste-mold machines, *i. e.*, Libbey's so-called Westlake Machine and Hartford's No. 28 Paste-Mold Machine.

(3) *Purposes and Effect.* In entering into the contracts above mentioned neither Owens nor Hartford had any purpose to restrain trade or commerce in glassware nor in machinery, inventions or patents for the manufacture of glassware, nor any purpose to monopolize any part of trade or commerce either in glassware or in machinery, inventions or patents for the manufacture of glassware, nor did either of them combine or conspire between themselves or with any other persons to do any of the foregoing things; nor did said contracts, either singly or in conjunction with one another, have any such effect.

Neither singly nor in conjunction with one another did the contracts give or confirm Owens in any dominant com- [fol. 13711] petitive position, nor eliminate competition, nor effect or perpetuate a division of fields by allotting the suction process to Owens and gob feed to Hartford. Such

dominance or leadership as Owens may have had in manufacture by the suction process was the result of long and intensive improvement of its operating methods and technique and the building up of highly skilled operating personnel over a period of many years and at a great expense. Such dominance as Hartford enjoyed in the so-called gob feed field was the result of its own inventions, patents, research and service.

Existing Relations Between Owens and Hartford
(See Hartford brief, p. 363.)

13. The license agreements from Owens to Hartford and from Hartford to Owens are non-exclusive and have been non-exclusive since 1932.

Owens ceased to have any share in Hartford's divisible income in 1935, and has had none since.

There are no tying clauses in any agreements between the parties.

There have been no ware restrictions of any kind since October, 1940; previously, the only fields of ware excluded from Owens' licenses were those as to which Hartford had granted all rights in its inventions to others.

Owens has had since February, 1931, no voice, control or veto of any kind in Hartford's licensing policy.

Competition Between Suction Process and Hartford Gob Feeding Process
(See Hartford brief, pp. 122-3.)

14. There have been continuous rivalry and competition between Owens and Hartford in the development, improvement and perfecting by Owens of the suction process and by Hartford of its shaped suspended-charge feeding process [fol. 13712] ever since the introduction of the said Hartford process, in the course of which each company has spent large sums of money and has sought assiduously to obtain operating superiority. On the whole, Hartford's efforts to improve its suspended-charge feeding system and apparatus have been successful, its method and apparatus have reduced the share of the market which the suction process supplied, and it has been able to keep its licensees in a strong, competitive position with relation to the suction process.